Catherine R. Nathan MISSISSIPPI TOBACCO LITIGATION 5/16/97

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CONDENSED TRANSCRIPT AND CONCORDANCE
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IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI

IN RE: MIKE MOORE, ATTORNEY GENERAL EX REL. STATE OF MISSISSIPPI TOBACCO LITIGATION) Cause No. 94-1429

The discovery deposition of CATHERINE R. NATHAN, for examination taken in the above-entitled cause before KIMBERLY WINKLER CHRISTOPHER, a Notary Public within and for the County of Kane, State of Illinois, and a Certified Shorthand Reporter of said State, taken at 77 West Wacker Drive, Suite 3500, Chicago, Illinois, on (10:00) the 16th day of May, 1997, at the hour of o'clock a.m. pursuant to Notice.

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PRESENT

SCRUGGS, MILLETTE, LAWSON, BOZEMAN & DENT
BY: MR. LEE E. YOUNG
734 Delmas Avenue
Pascagoula, Mississippi 39567
and
LEWIS & LEWIS
BY: MR. MICHAEL T. LEWIS
519 First Street
P.O. Drawer 1600
Clarksdale, Mississippi 38614-1600
Appeared on behalf of the Plaintiff;

JONES, DAY, REAVIS & POGUE
BY: MR. PETER J. BIERSTEKER
Metropolitan Square
1450 G Street, N.W.
Washington, D.C. 20005-2088
Appeared on behalf of R.J. Reynolds Tobacco Company.

ALSO PRESENT:

MR. DORN K. DEAN
MR. TRI MacDONALD

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(Witness sworn.)

CATHERINE R. NATHAN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BIERSTEKER:

Q. Is it Ms. Nathan or is it –

A. Ms.

Q. Ms., okay. Have you ever been deposed before?

A. I have not.

Q. You have not. You've probably gone over this with your counsel, but let me just review a couple of ground rules.

First of all, if you ever want to take a break, let me know and we will. Is that okay?

A. Yes, it is.

Q. All right. Second, you need to answer out loud. It helps the reporter. Shakes of the head are difficult to take down in words. So would you do that as well?

A. I will.

Q. It also helps if we don't speak at the same time. I know in the give and take of

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questioning it's hard to keep that in mind. But if you would permit me to finish my question before you answer, and I will try to wait until you finish your answer before I ask the next question. Shall we do that?

A. We will.

Q. Sometimes I don't ask clear questions. In fact, some people would say most of my questions aren't clear. I do my best. But if you do not understand a question I ask, let me know and I will try to rephrase it in a way that makes it comprehensible. Okay?

A. Okay.

Q. All right. Are you being compensated for your time here today?

A. I am.

Q. What is your hourly rate?

A. The firm considers that information to be confidential and our arrangement between Tucker Alan and counsel.

Q. Is the hourly rate that you're charging the same as your hourly rate

for all the work that you do, or is it higher because you're testifying?

MR. YOUNG: If you know.

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THE WITNESS: I believe it's the same.

BY MR. BIERSTEKER:

Q. Do you have a resume?

A. I do.

Q. Did you bring it with you?

A. I did not.

Q. Perhaps if you could provide that to us after the deposition is over, that would be helpful.

MR. BIERSTEKER: Counsel, will you –

MR. YOUNG: Did the notice call for a –

MR. BIERSTEKER: No. I didn't send a duces tecum.

MR. YOUNG: So –

BY MR. BIERSTEKER:

Q. Well, why don't you review for me your education since high school.

A. I attended Loyola University of Chicago for my undergrad, and I received a bachelor of science honors in biology. After that I attended the University of Chicago, Irving Harris Graduate School of Public Policy Studies, where I received a master's.

Q. And that was in public policy?

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A. That was in public policy.

Q. All right. Any further formal education?

A. No.

Q. What years did you receive your BA and MA?

A. I received my BA in 1987 and my MA in 1989.

Q. And why don't you review for me your employment history?

A. While I was in graduate school, I completed internships at the American Medical Association for the Center for Health Policy Research. And that was a year long internship with some additional – about six months afterwards. Then after that I completed an internship at Gibbs & Company, which is a consulting and public relations firm in Chicago. And after that I was employed at Gibbs & Company for a year.

Q. Okay. When did you start at Gibbs & Company?

A. 1988, summer, summer of '88. So it was

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about a year and a half.

(Whereupon, Mr. Lewis entered the proceedings.)

BY MR. BIERSTEKER:

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Q. And were you employed at Gibbs & Company full-time for that one-year period?

A. Yes.

Q. So you pursued your master's simultaneously –

A. Right.

Q. (Continuing) – with being fully employed?

A. Right.

Q. And you said Gibbs & Company was a public relations and consulting firm?

A. And government consulting firm, yes. Public relations and government relations.

Q. What did you do at Gibbs & Company?

A. I was the assistant to the president.

Q. What were the nature of your duties?

A. We conducted a number of engagements for public – public policy related engagements. For example, we coordinated a mayoral election series of speeches and meetings of community groups to

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discuss issues related to the mayoral elections.

We developed public policy issue papers related to education in the City of Chicago, healthcare, environmental issues that these groups discussed, and then made recommendations that they'd like to see addressed in the mayoral debates. And then as a result of these we submitted questions for the mayoral debates that took place on local public television.

Q. Did you have a specific project to which you were assigned when you were at the American Medical Association?

A. Yes. In addition with doing smaller issue papers, the largest project I worked on was a follow-up study to an international study of physician payment. The AMA had done a comprehensive study of physician payment in other countries. And I primarily focused on putting together a bibliography of information that had been published since then, as well as information that was in the Center for Health Policy Research, and preparation of a presentation to the board of trustees about the current status of physician

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payment policies in the countries that

they had (2) *previously studied.*

(3) **Q. Did you analyze the literature that you** (4) **located, or were you more of a find the literature** (5) **person?**

(6) *A. Both. Some of both.*

(7) **Q. And you said you were at Gibbs & Company** (8) **for one year?**

(9) *A. One year employment, right.*

(10) **Q. So in 1989 after you left Gibbs &** (11) **Company, where did you go?**

(12) *A. I went to Peat, Marwick.*

(13) **Q. How long were you at Peat, Marwick?**

(14) *A. Until November of 1984 – '94. Sorry.*

(15) **Q. Did you have a title at Peat, Marwick?**

(16) *A. The last title that I had there was* (17) *manager.*

(18) **Q. Were you manager of a particular office** (19) **or division or department?**

(20) *A. I was a manager in the social policy and* (21) *systems group of the government services* (22) *practice.*

(23) **Q. Social policy and systems group –**

(24) *A. And systems.*

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(1) **Q. (Continuing) – of the government what?**

(2) *A. Services practice.*

(3) **Q. Now, I don't want to know specific** (4) **clients for whom you worked when you were at Peat,** (5) **Marwick, but I would like to know the areas in** (6) **which your work focused. And in particular I'm** (7) **interested in what you worked on, medicaid and** (8) **healthcare, those sorts of things.**

(9) *A. The focus of our client work in the* (10) *social policy and systems group was public payers* (11) *of healthcare. So primarily my clients were* (12) *medicaid and other public healthcare payers such* (13) *as state employee benefit groups, workers'* (14) *compensation. And we provided a variety of policy* (15) *reimbursement and operational consulting* (16) *engagements for these clients.*

(17) **Q. And then in November of '94 did you go** (18) **to Tucker Alan?**

(19) *A. Yes.*

(20) **Q. At the time you went to Tucker Alan, had** (21) **they been retained to represent – or had they** (22) **been retained to do work in connection with the** (23) **tobacco litigation?**

(24) *A. No, not at that time.*

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(1) **Q. What is Tucker Alan?**

(2) *A. Tucker Alan is a business and litigation* (3) *consulting firm.*

(4) **Q. Approximately what proportion of the** (5) **work that – oh, did you do any litigation work** (6) **when you were at Peat, Marwick?**

(7) *A. I did not.*

(8) **Q. Apart from working on the tobacco** (9) **litigation at Tucker Alan, what other matters –** (10) **again without revealing client names – have you** (11) **been engaged in?**

(12) *A. I continue to provide services to state* (13) *medicaid agencies and other public payers of* (14) *healthcare services. Again, policy reimbursement* (15) *and operational consulting services. Many of my* (16) *clients remain the same.*

(17) **Q. What is the range of services that** (18) **Tucker Alan provides?**

(19) *A. Can you define "range of services"?*

(20) **Q. Well, you said it was a business** (21) **consulting and litigation consulting firm.** (22) **Litigation consulting I understand.**

(23) *A. Right.*

(24) **Q. Business consulting presumably focuses**

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(1) **on certain areas?**

(2) *A. Yes.*

(3) **Q. And I was wondering what areas it** (4) **focused on.**

(5) *A. Tucker Alan has clients in various* (6) *topical areas such as construction and* (7) *environmental and healthcare. And I don't work in* (8) *any other areas outside of healthcare so I* (9) *couldn't give you anything more than a general* (10) *discussion of, you know, the topical areas that* (11) *Tucker Alan does.*

(12) **Q. How many professionals work at Tucker** (13) **Alan approximately?**

(14) *A. About 150.*

(15) **Q. And what are their areas of expertise** (16) **generally?**

(17) *A. It would be the same areas that I spoke* (18) *of.*

(19) **Q. Well, are they expert in particular** (20) **industries, or are there also particular skills** (21) **like accountants and economists and that sort of** (22) **thing?**

(23) *A. Right. As I understand it, some of my* (24) *colleagues are accountants and some of my*

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(1) *colleagues have finance degrees and some of my* (2) *colleagues have master's degrees in health* (3) *administration.*

(4) **Q. When was Tucker Alan retained in** (5) **connection with the tobacco litigation?**

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(6) *A. I believe it was the summer of '96. I*
(7) *don't know exactly.*
(8) **Q. Do you know if there's a retention**
(9) **letter or an agreement?**
(10) *A. I believe so, but I haven't seen it.*
(11) **Q. By whom was Tucker Alan retained?**
(12) *A. Our clients are Scruggs, Millette.*
(13) **Q. And what cases is Tucker Alan working** (14) **other than the Mississippi case?**
(15) *A. I believe that we are engaged by some* (16) *other – we are engaged to work in some other* (17) *states, but I don't think that any of that has* (18) *been publicly disclosed so that we would consider* (19) *that to be confidential as a firm policy.*
(20) **Q. Are you refusing to answer?**
(21) *A. I don't believe I can answer because of* (22) *our firm policy not to divulge that information* (23) *because of our confidential arrangement.*
(24) **Q. Well, I think actually you probably**

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(1) **waived it at least in some jurisdictions. Tucker** (2) **Alan have showed up in Texas to discuss exchanges** (3) **of electronic data, and it seems to me that–**
(4) *A. As a matter of fact, I think Texas may*
(5) *be the only one where some sort of public*
–
(6) **Q. There are others, however, beyond Texas?**
(7) *A. Yes.*
(8) **Q. And, of course, Florida as well? Again,** (9) **representatives of Tucker Alan showed up in** (10) **discussions about exchanges of data tapes.**
(11) *A. Yes, we have.*
(12) **Q. How many professionals at Tucker Alan** (13) **are working on the tobacco litigation?**
(14) *A. I don't know if I know the answer to*
(15) *that question. I mean, I'd be guessing.*
(16) **Q. Approximately how many?**
(17) *A. It would be hard for me to answer that* (18) *question because it's varied from one point in* (19) *time, you know, at various points, depending on* (20) *what we were working on. So it would be hard for* (21) *me to say right now.*
(22) **Q. Has the volume of activity increased or** (23) **decreased over time?**
(24) *A. It's fluctuated.*

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(1) **Q. Okay. Why don't you provide me with the** (2) **names of the individuals at Tucker Alan who you** (3) **know have worked on the tobacco litigation?**

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(4) MR. YOUNG: Peter, the scope of this
(5) deposition was supposed to be concerning the data – (6) the expenditure data and what was provided to (7) Wendy Max. We're starting to get way off of that (8) so I'm going to ask you to direct your questions (9) to those areas like we agreed.
(10) MR. BIERSTEKER: Well, I'm not sure there was (11) an agreement in that regard.
(12) MR. YOUNG: Well –
(13) MR. BIERSTEKER: Are you telling her not to (14) answer the question?
(15) MR. YOUNG: Yeah, I am.
(16) MR. BIERSTEKER: And on what basis are you (17) giving that instruction?
(18) MR. YOUNG: Continue on with your questions.
(19) MR. BIERSTEKER: You don't feel obligated at (20) all to explain your rationale?
(21) MR. YOUNG: No.
(22) MR. BIERSTEKER: All right.
(23) BY MR. BIERSTEKER:
(24) **Q. What consulting services has Tucker Alan**

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(1) **provided in connection with the tobacco** (2) **litigation?**
(3) MR. YOUNG: Again, that's not what the scope (4) of this deposition was to be about.
(5) MR. BIERSTEKER: Well, she's here to testify (6) about her work, as I understand it, as a fact (7) witness. I'm asking what's been done.
(8) MR. YOUNG: As to expenditure information (9) that was provided to Vince and Wendy. You can ask (10) her about that information.
(11) MR. BIERSTEKER: So you won't let her answer (12) anything other than information that she has (13) provided about expenditures; is that right?
(14) MR. YOUNG: That's what my understanding of (15) this deposition is all about.
(16) MR. BIERSTEKER: Well, I don't know where you (17) got that understanding. But is that your (18) position?
(19) MR. YOUNG: My understanding was from our (20) phone conference when you said, Look, I don't want (21) to get into what work she's been doing for you all (22) on a consulting basis or anything like that; I (23) just want to know what Vince and Wendy are relying (24) on in terms of the expenditure data and how they

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(1) got it, sort of the chain of custody. That was (2) relayed to you over the phone to me, so –
(3) MR. BIERSTEKER: I have a different
(4) recollection of that discussion.

(5) MR. YOUNG: This is off the record.
(6) (Discussion off the record.)
(7) MR. LEWIS: Okay. Back on the record.
(8) BY MR. BIERSTEKER:
(9) **Q. What specific tasks have you personally** (10) **performed in connection with the tobacco** (11) **litigation?**
(12) *A. I can tell you about the tasks related* (13) *to providing the information to Dr. Max and Dr.* (14) *Miller; all of the letters for which we provided* (15) *the information which were turned over in Dr.* (16) *Max's deposition, the binders.*
(17) **Q. I'm sorry. Continue.**
(18) *A. All of the information in the letters,* (19) *in the binders, that were sent to Dr. Max. I was* (20) *involved in all of the tasks to generate that* (21) *information.*
(22) **Q. But you were involved in tasks beyond** (23) **that reflected in what was previously marked as** (24) **Max Deposition Exhibit 2?**

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(1) *A. In – yes.*
(2) **Q. Did any of those other tasks beyond** (3) **providing the information that you gave to Dr. Max** (4) **and Miller relate to expenditures that are in** (5) **issue in this lawsuit?**
(6) *A. Not directly. I don't believe so.*
(7) **Q. Are you an expert in medicaid?**
(8) *A. I believe I have some knowledge about* (9) *medicaid programs, yes, but I don't know if I* (10) *would – I have a significant experience in* (11) *medicaid programs.*
(12) **Q. Do you have more knowledge than a** (13) **layperson does about medicaid programs?**
(14) *A. Probably, yes.*
(15) **Q. Are you an expert in healthcare** (16) **financing?**
(17) *A. Could you define "healthcare* (18) *financing"? It has a specific meaning in* (19) *healthcare, so –*
(20) **Q. Well, what does it mean in healthcare?**
(21) *A. Well, it depends on if you're talking* (22) *about financing of healthcare programs such as* (23) *revenues and taxation or if you're talking about* (24) *healthcare finance in terms of accounting systems*

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(1) *for hospitals, so –*
(2) **Q. The former is what I had in mind.**
(3) *A. No.*
(4) **Q. You are, however, expert in the latter?**
(5) *A. Not in hospital accounting systems or –* (6) *I'm not an accountant. There's also another* (7) *interpretation of healthcare financing in terms of* (8) *paying for services, reimbursement. So if the* (9) *standard is knowing more than the layman, then* (10) *yes.*
(11) **Q. And, in fact, that's been an area of** (12) **practice since about 1989 or so?**
(13) *A. Right.*
(14) **Q. Or '88.**
(15) **Prior to your work on the tobacco** (16) **litigation, had you ever analyzed healthcare** (17) **claims data?**
(18) *A. Yes.*
(19) **Q. Had you done that a number of times?**
(20) *A. Yes.*
(21) **Q. Are you expert in healthcare claims** (22) **data?**
(23) *A. Yes.*
(24) **Q. Do you believe you are an expert in any**

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(1) **other field?**
(2) *A. Outside of healthcare or within* (3) *healthcare?*
(4) **Q. Either. Both.**
(5) MR. BIERSTEKER: Object to the form of the (6) question?
(7) MR. YOUNG: Yes.
(8) MR. BIERSTEKER: All right. Fair enough.
(9) BY MR. BIERSTEKER:
(10) **Q. Are you expert in any other field–**
(11) MR. YOUNG: You can now interpret my (12) disgruntled looks. We've been to too many (13) depositions.
(14) MR. BIERSTEKER: We've been together too (15) long.
(16) BY MR. BIERSTEKER:
(17) **Q. Are you expert in any other fields?**
(18) *A. Outside of healthcare, no.*
(19) **Q. Just generally. Outside, inside,** (20) **generally?**
(21) *A. There's a number of activities related* (22) *to the operation of medicaid that I've been* (23) *involved with in terms of program policies,* (24) *regulations, managed care for medicaid*

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(1) *specifically.*
(2) **Q. What do you mean by "program policies"?**
(3) *A. The rules and regulation under which a* (4) *medicaid program operates; from the federal level,* (5) *from the state level, from the regional level.* (6) *I've done a lot of work researching and writing* (7) *both directions.*
(8) **Q. Do you have any publications?**
(9) *A. I do not.*
(10) **Q. So the writing you've done has**

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all been (11) in connection with a particular client?
(12) *A. Right, right.*
(13) **Q. Did you have to do a thesis for your (14) master's degree?**
(15) *A. I did not.*
(16) **Q. Is there any other field in which you (17) think you are an expert?**
(18) *A. Outside of healthcare, no. Although I (19) could probably answer that question better if I (20) had an example, but I mean –*
(21) **Q. Well, are you an expert in statistics?**
(22) *A. No.*
(23) **Q. Economics?**
(24) *A. Well, I have taken classes in statistics*

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(1) *as part of my undergraduate and graduate degree.*
(2) **Q. Well, okay.**
(3) *A. So, I mean, if the standard is knowing (4) more than the layman, as you stated earlier, I (5) don't know – yeah, I guess.*
(6) **Q. All right. Economics, are you an expert (7) in economics?**
(8) *A. I have taken classes in economics for my (9) undergraduate and master's degree.*
(10) **Q. Are you an expert in econometrics?**
(11) *A. Using that same standard then, yes.*
(12) **Q. Are you an expert in SAMMEC, (13) S-A-M-M-E-C?**
(14) *A. Well, yeah, using that same standard, (15) then – I mean, I'm familiar with it; I've read (16) it.*
(17) **Q. Let me ask it this way: I mean, would (18) you feel qualified to give professional opinions (19) on that subject on behalf of Tucker Alan?**
(20) *A. No.*
(21) **Q. All right. Fair enough.**
(22) *A. And I probably would say the same for (23) the previous questions, statistics, economics and (24) econometrics.*

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(1) **Q. Fair enough. Using that new definition, (2) are you an expert on the mortality approach?**
(3) *A. No.*
(4) **Q. Are you an expert in epidemiology?**
(5) *A. No.*
(6) **Q. Or medicine?**
(7) *A. No.*
(8) **Q. Did you – why don't we – this was (9) previously an exhibit, and let's just make it an (10) exhibit to your deposition, too. But this is the (11) binder, double-sided copied without tabs (12) unfortunately. But we'll have some questions (13) about that as we go along today so we'll mark that (14) Nathan 1.**
(15) (Nathan Exhibit No. 1 marked (16) as requested.)
(17) MR. YOUNG: Are you about to ask her a (18) question?
(19) MR. BIERSTEKER: Not specific questions about (20) the document at this juncture.
(21) BY MR. BIERSTEKER:
(22) **Q. I did want to say does Exhibit 1 to your (23) deposition – well, first of all, is that the work (24) product that you provided to Dr. Max and to Dr.**

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(1) **Miller?**
(2) (Witness examining document.)
(3) THE WITNESS: Yes.
(4) BY MR. BIERSTEKER:
(5) **Q. Did you head up the effort to prepare (6) the information reflected in Ex-hibit 1?**
(7) *A. Yes. It was – it was – let me (8) clarify. It was a team effort, but I think I had (9) one of the lead roles, yes.*
(10) **Q. Okay. Did you focus in one particular (11) area or another? Did you have overall (12) responsibility for preparing this information?**
(13) *A. I was involved in each and every one of (14) them to a significant degree, so –*
(15) **Q. Well, who ultimately had responsibility (16) for this work product?**
(17) *A. In terms of getting it completed, it was (18) myself; but we also have Todd Menenberg, who was (19) our vice president on the engagement, who has (20) ultimate quality control and –*
(21) **Q. Would it be fair to say that on a (22) day-to-day basis you were the principal person in (23) charge of this effort?**
(24) *A. I would say that I was involved with it*

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(1) *on a day-to-day basis, and I would – I would also (2) say – it's hard to say overall in charge because (3) we had – I mean, it really was a team effort so –*
(4) **Q. All right. How many other professionals (5) assisted in this effort?**
(6) *A. Depending on the stage, the number (7) varied over time. I mean, I had – I had a team (8) of people working on various components of it over (9) time.*
(10) **Q. Who was on your team then? I would (11) venture to guess Mr. Dean was?**
(12) *A. No. That's not – I thought you had*

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(13) *asked that question earlier about who else worked* (14) *on this and* –
(15) **Q. No, I did not. It was a different** (16) **question.**
(17) *A. Okay. Well, you can also see from the* (18) *letters that Wes Grover also worked because he* (19) *actually sent out some of the documents to Dr.* (20) *Max. So in terms of having other* (21) *responsibilities, Wes Grover also.*
(22) **Q. Let me just cut to the chase. I'm not** (23) **trying to make this hard; I'm really not. What I** (24) **want to know is, you know, who the people were who**

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(1) **worked on it and basically what their areas of** (2) **responsibility were and how you interfaced with** (3) **them. That's what I'm trying to get to, okay?** (4) **And, I mean, I can tell you the names I've seen on** (5) **the correspondence were Wes Grover, Mr. Dean,** (6) **Mr. Kevin Harris, and Todd Menenberg.**
(7) *A. Okay.*
(8) **Q. Was there anybody else who worked on the** (9) **work – any other professional at Tucker Alan that** (10) **worked on the project as reflected in Exhibit 1?**
(11) *A. Whose names were not on the letters?*
(12) **Q. Yes.**
(13) *A. Yes.*
(14) **Q. All right. And so who were those** (15) **people?**
(16) *A. Okay. There was Margie – Margaret* (17) *Baydoun, B-a-y-d-o-u-n; and Sean Christen,* (18) *C-h-r-i-s-t-e-n. And I'm trying to remember in* (19) *terms of roles directly related to producing* (20) *this. And Tina Greenwald, G-r-e-e-n-w-a-l-d. I* (21) *think that's – those are the – yeah, those are* (22) *the major.*
(23) **Q. Over what period of time did you work in** (24) **gathering and developing the information reflected**

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(1) **in Exhibit 1?**
(2) *A. I first became involved in the fall of* (3) *'96.*
(4) **Q. Were you among the first to become** (5) **involved in this effort?**
(6) *A. In terms of actually preparing the* (7) *expenditure data?*
(8) **Q. Analyzing it.**
(9) *A. Well, right, preparing whatever outputs.*
(10) **Q. I don't mean typing it out.**
(11) *A. No, no. I understand.*
(12) **Q. Yes.**
(13) *A. But because of the other activities that* (14) *we're also performing that are outside of the* (15) *expenditure data, simultaneously things happen at* (16) *the same time; but yes. I was involved from the* (17) *beginning, if that's the question.*
(18) **Q. Now, other people you've mentioned, did** (19) **Mr. Dean report to you as part of this team?**
(20) *A. No.*
(21) **Q. Of the people who were on the team, were** (22) **there lines of reporting authority?**
(23) *A. Not hierarchial lines. There were* (24) *analyses planned and assigned in the course of*

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(1) *preparing these.*
(2) **Q. All right. What analyses did you** (3) **personally do?**
(4) *A. Did I personally do?*
(5) **Q. Yes, that are reflected in Exhibit 1.**
(6) *A. I directed the analysis, and in that I* (7) *developed the conceptual analysis plan and laid* (8) *out the steps for all of them with the exception* (9) *of the UMMC and Singing River and Forrest General,* (10) *although I did participate in the aggregation of* (11) *that data. Those involved less analysis plans and* (12) *more of collecting and laying out the data from* (13) *the sources directly.*
(14) MR. BIERSTEKER: Can I have that answer read (15) back, please.
(16) (Record read as requested.)
(17) BY MR. BIERSTEKER:
(18) **Q. What do you mean by "conceptual analysis** (19) **plan"?**
(20) *A. Determining what data we were going to* (21) *use, how we were going to use the data, how we* (22) *were going to organize the data, what format the* (23) *output would look like. And all of that was done* (24) *in conversations with and in consultation with and*

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(1) *approval by Dr. Max. So we didn't, you know, go* (2) *off in some corner and deliver a product to Wendy* (3) *a few months later. Every step of the way every* (4) *analysis plan and, you know, do you like the* (5) *layout of the spreadsheet, was done in* (6) *consultation with Dr. Max.*
(7) **Q. And what do you mean then by laid out** (8) **the steps for all of the – I guess conceptual** (9) **analyses?**
(10) *A. Determining, for example, if we had to* (11) *extract data from the database; that might be a* (12) *step. Determining how the HCFA 64s would be* (13) *sorted according to Dr. Max's data request;* (14) *determining how the HCFA 64s would be applied to* (15) *or would be applied in another step of the data.*
(16) *A lot of this is sequential, so figuring out*

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what needs to be done before the other step in order to make the expenditure data correct.

Q. I take it then that others on the team actually analyzed the data and executed these steps?

A. For the final versions in terms of preparing the final spreadsheets, yes. For purposes of actually programming, writing in a

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program language that I don't personally program in in order to extract the data, yes. But all of that was subject to my review and discussion.

Q. Well, that was my next question. Did you supervise the execution of the steps that you laid out in the conceptual analysis plans?

A. Right, with – in consultation with Dr. Max.

Q. Right. Now, did Mr. Dean execute the steps and the conceptual analysis plan that you devised?

A. No.

Q. What did Mr. Dean do?

A. He served as a technical adviser; he served in a quality control role.

Q. You mean technical adviser in what sense, computers?

A. Not – not in terms of programming or in that sort of sense.

Q. In what sense then as a technical adviser?

A. From a litigation, technical perspective; using his experience in the area of litigation, in terms of litigation products

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developing in the process of damage estimate development, those kinds of things.

Q. All right. What was Mr. Harris's contribution?

A. Mr. Harris is a vice president in our healthcare practice so he has knowledge specifically of healthcare data and information, so occasionally we had some consultations with him about data issues. He, again, was a technical adviser. He didn't execute any of the steps.

Q. Does he have expertise above and beyond that which you have related to healthcare claims data?

A. I don't know. I don't know if I'd – I don't know how I'd characterize it. We work together; we work in similar areas.

Q. What percentage of your time did you spend since the fall of '96 on this project approximately?

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A. Not a hundred percent, but I really wouldn't be able to give it a percentage. I mean, I know it wasn't a hundred percent. I had other clients whose –

Q. I know. But since the fall of '96 was

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it half your time, three-quarters of your time?

MR. YOUNG: You're talking about Exhibit 1 in preparation –

MR. BIERSTEKER: Yes.

THE WITNESS: On average half, but it would fluctuate depending on –

BY MR. BIERSTEKER:

Q. And then if you take into account the other work that you've done in connection with the tobacco litigation, not just in Mississippi but perhaps elsewhere, what percentage of your time has been spent on all of the tobacco litigation matters all together?

A. I'd say on average half.

Q. Right.

A. Yeah, right. That's what I was taking into consideration when I –

Q. I see. All right. Well, how much – what percentage of your time specifically was spent on Exhibit 1? Approximately. Again, I'm just looking for a ballpark.

A. It seems like it all averages out to half and half because it just changes. You know, some days it's a hundred percent, some days it's

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zero so – and everything in between, so...

Q. Okay.

A. I do a lot of things.

Q. All right. What did Margie Baydoun or Baydoun do?

A. She was our programmer.

Q. Okay. How about Mr. Christen?

A. He is a – he's overseeing the management of the database overall.

Q. What database?

A. The claims –

Q. Okay.

A. (Continuing) – databases.

Q. For medicaid alone or for all of them?

A. For all databases we have.

Q. All right. And how about Miss Greenwald?

A. She worked with the spreadsheets that are in the Exhibit 1.

Q. Did she perform any analyses of the data?

A. Not from the database. She did –

Q. Did she just do the format of the

(24) **spreadsheets, or did she have substantive**

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(1) **involvement is my question?**

(2) *A. Oh, she had – she had substantive* (3) *involvement.*

(4) **Q. Okay. Are you doing analyses similar to** (5) **that reflected in Exhibit 1 in connection with** (6) **lawsuits against the tobacco industry pending in** (7) **other jurisdictions?**

(8) MR. YOUNG: Object and tell her not –

(9) MR. BIERSTEKER: Before you tell her not to (10) answer, I think it's perfectly relevant because (11) the next question is going to be after (12) establishing the predicate first – the next (13) question is are you doing it differently. Okay? (14) I think that's perfectly appropriate. I'd ask you (15) to reconsider the objection. I'm not even going (16) to ask her which jurisdictions.

(17) MR. YOUNG: You can answer, if you can.

(18) THE WITNESS: We have not begun to do (19) substantive work so I couldn't answer the (20) question.

(21) BY MR. BIERSTEKER:

(22) **Q. Okay. Let's talk about some of the** (23) **specific tasks that you did. One of the first** (24) **things I gather that you had to do is to identify –**

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(1) **we'll talk about medicaid first. We'll take them** (2) **in chunks, all right?**

(3) **One of the first things you had to do,** (4) **as I understand it, was identify total** (5) **expenditures by the Mississippi medicaid program** (6) **over a period of years; is that right?**

(7) *A. That was one of the – that was really* (8) *the premise of the data request from Dr. Max. She* (9) *was looking for expenditures. And part – as you* (10) *see in our exhibit, there are total expenditures* (11) *by fiscal year.*

(12) **Q. Did you decide to use Line Item 11 to** (13) **the HCFA 64 reports as the basis for which you** (14) **computed the total expenditures by year?**

(15) *A. Based on discussions with Dr. Max and* (16) *our evaluation of the HCFA 64 Line 11, we* (17) *presented that option to Dr. Max; and she approved* (18) *it. So it was her –*

(19) **Q. Well, did you present options or did you** (20) **make recommendations?**

(21) *A. No. We presented options.*

(22) **Q. Okay. Did you provide Dr. Max with an** (23) **explanation of the advantages and disadvantages of** (24) **the different options that you presented?**

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(1) *A. Yes.*

(2) **Q. What were the options that you presented** (3) **to Dr. Max?**

(4) *A. Are we talking about any of the* (5) *specifics for medicaid?*

(6) **Q. Well, now we're talking about the choice** (7) **of Line Item 11 in the HCFA 64 reports.**

(8) *A. Is that for the SAMMEC analysis only or* (9) *are we talking about the SAMMEC and –*

(10) **Q. Well, this is the total, right?**

(11) *A. Right.*

(12) **Q. And that total is used in both the** (13) **SAMMEC and the mortality approach, right?**

(14) *A. Yes. Yes, it is, yes. The HCFA 64 data* (15) *as a data source, based on our experience with the* (16) *HCFA 64 data, is one that we found to be a good* (17) *one for a number of reasons. And all of those* (18) *reasons are reflected in the Line 11.* (19) *The first is it reflects data that's not* (20) *in the claims data; adjustments, for example,* (21) *fraud and abuse and TPL. It is audited by the* (22) *HCFA regional office on a quarterly basis. And* (23) *perhaps most importantly, it is how the state* (24) *represents to the feds what their expenditures are*

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(1) *so that the fed – the federal government can* (2) *reimburse them for their federal financial* (3) *participation. So it's something that's relied* (4) *upon by the federal government as an accurate* (5) *statement of expenditures.*

(6) *Line 11 is the line on the HCFA 64 that* (7) *reflects all of those benefits of the document.* (8) *It includes all of those adjustments. And, of* (9) *course, like everything else on the HCFA 64, it* (10) *too is audited; and it is the number that is the* (11) *basis for the federal financial participation, the* (12) *final net number.*

(13) **Q. Was there any disadvantage to using Line** (14) **11?**

(15) *A. I think it was the best data we had* (16) *available to use as the expenditure totals.*

(17) **Q. That wasn't my question. My question is** (18) **is there any disadvantage to using Line 11?**

(19) *A. If we had no other data, the* (20) *disadvantage would be that you can't break it up* (21) *into age and gender, for example, or age category* (22) *which was relevant to the S-89 or diagnosis* (23) *relevant to the S-89. And that would be a* (24) *disadvantage if we didn't have the claims data,*

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(1) *but we did have the claims data.*
(2) **Q. Are there any other disadvantages to** (3) **using Line 11?**
(4) *A. I can't think of any right now.*
(5) **Q. Okay. What besides Line 11 on the HCFA** (6) **64 reports did you present as an option to Dr. Max** (7) **for determining total Mississippi medicaid** (8) **expenditures by year?**
(9) *A. Well, the only other total that's on the* (10) *HCFA 64 is Line 6. Line 6 has all the information* (11) *of the HCFA 64 types of service. And it is a* (12) *total expenditure, but it's not a total* (13) *expenditure with all those additional adjustments* (14) *and other data information not in the claims* (15) *data.*
(16) **Q. What's the difference between Line 6 and** (17) **Line 11?**
(18) *A. The difference between Line 6 and Line* (19) *11 are what we term the bottom-line adjustments,* (20) *and those would be all the expenditure numbers* (21) *that are netted either in or out of those Line 6* (22) *totals. It would be the overpayments or* (23) *underpayments; it would be the prior period* (24) *adjustments; it would be the fraud and abuse*

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(1) *adjustments, which again could be positive or* (2) *negative; third party liability, which again could* (3) *be positive or negative; collections; I don't* (4) *think I said federal audit adjustments if as a* (5) *result of a federal audit the feds indicate that* (6) *there should be a adjustment.*
(7) **Q. And a Line 11 is net of all these?**
(8) *A. Yes.*
(9) **Q. And Line 6 is not?**
(10) *A. Right.*
(11) **Q. Are there any other differences between** (12) **Line 6 and Line 11?**
(13) *A. Not that I'm aware of.*
(14) **Q. Okay. Were any sources of total** (15) **medicaid expenditures other than the HCFA 64** (16) **reports presented as an option to Dr. Max?**
(17) *A. No.*
(18) **Q. At one time didn't you rely upon the** (19) **annual reports from Mississippi medicaid in** (20) **earlier iterations of her reports?**
(21) *A. I don't believe we relied on it. We –* (22) *that wasn't data we provided to her to rely on.*
(23) **Q. Did you present that as an option to** (24) **her?**

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(1) *A. Not for the final documents in Exhibit*
(2) *1. There –*

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(3) **Q. Well –**
(4) *A. In the course of – in the course of* (5) *over time we probably went through a list of data* (6) *sources, but I don't think annual reports were* (7) *ever an option.*
(8) **Q. Why not?**
(9) *A. We felt that the use of the HCFA – the* (10) *benefits of the HCFA 64 outweighed the annual* (11) *reports. The annual reports are presented for* (12) *informational purposes. They aren't necessarily* (13) *audited such as these reports are audited by the* (14) *regional office. They're developed by different* (15) *people according to different requirements of the* (16) *information that wants to be produced in the* (17) *annual report. For example, one year the annual* (18) *report might want to highlight nursing home* (19) *expenditures, so they might have a lot of charts* (20) *or tables about nursing home expenditures. They* (21) *use the MARS reports primarily to generate the* (22) *information in the annual report. And again,* (23) *those are from the claims data which don't have* (24) *the supplemental sources of adjustments that are*

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(1) *in the Line 11 of the HCFA 64.*
(2) **Q. Did you ever try to reconcile the claims** (3) **data to the HCFA 64s in any other reports?**
(4) *A. Not for – not for purposes of* (5) *developing the expenditure estimates for Dr. Max.*
(6) **Q. Okay. I take it you did it, though?**
(7) *A. Well –*
(8) **Q. Or attempted to?**
(9) MR. YOUNG: Again, I'm going to object. It's (10) outside the data that she's relayed to Dr. Max or (11) Dr. Miller.
(12) BY MR. BIERSTEKER:
(13) **Q. You may answer the question.**
(14) *A. We did have total expenditures from HCFA* (15) *64, Line 11; and we also had total expenditures by* (16) *fiscal year from the claims data. So if you're* (17) *asking if we looked at those two totals –*
(18) **Q. Well, you know what reconcile means?**
(19) *A. Right.*
(20) **Q. Okay. Did you attempt to reconcile the** (21) **two?**
(22) *A. To explain –*
(23) **Q. To determine what the differences were.**
(24) *A. To determine what the differences were?*

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(1) *Not fully, no. We looked at some of the*
(2) *differences, but we did not – we did not*

complete (3) *the analysis for purposes of giving Dr. Max her* (4) *data.*

(5) **Q. What differences did you use then?**

(6) *A. The differences in the expenditure* (7) *numbers.*

(8) **Q. But you acted as if you looked at** (9) **particular components. Did you look at particular** (10) **components? Let me ask the question another way.**

(11) **Did you complete any component of the** (12) **reconciliation process?**

(13) *A. We looked at the differences between the* (14) *numbers.*

(15) **Q. Okay. And what differences – what did** (16) **you do? What differences did you examine? How** (17) **did you go about exploring it?**

(18) *A. I'm having difficulty answering the* (19) *question because I'm – for purposes of what we* (20) *did for Dr. Max, we also had our consulting role* (21) *with our counsel; and I'm not sure that this falls* (22) *into –*

(23) **Q. Well, look, I mean, you used the claims** (24) **data; you used the HCFA 64 data as part of Exhibit**

(1) **1, right?**

(2) *A. Right.*

(3) **Q. Okay. Now, whether or not the** (4) **reconciliation was done wearing your consulting** (5) **hat or your Exhibit 1 hat, it seems to me that it** (6) **relates directly to Exhibit 1. And so my question** (7) **is –**

(8) *A. Not really.*

(9) **Q. Well, it does to me. And so my question** (10) **is do you know whether it's possible to reconcile** (11) **the claims data with the HCFA 64 data?**

(12) *A. I know that there would be reasons that* (13) *it would not be possible.*

(14) **Q. Okay.**

(15) *A. Based on our experience with claims data* (16) *and our experience with HCFA 64 data, you would* (17) *not expect the two sources of claims data to be* (18) *reconcilable. They come from different time* (19) *periods, and they have different data sources.* (20) *Those would be the two primary reasons.*

(21) **Q. Well, but you can fix the time period** (22) **problem, can't you?**

(23) *A. Not necessarily.*

(24) **Q. Why not?**

(1) *A. Because the claims data was extracted in* (2) *1996, for example, for purposes of this analysis.* (3) *It was a point in time database.*

(4) **Q. Right. But if it was extracted in 1997,** (5) **there's not going to be additional claims for** (6) **1996, are there?**

(7) *A. From – but when the HCFA 64 data was* (8) *put together in 1994, it was a point-in-time* (9) *analysis. Changes between the claims used in the* (10) *HCFA 64 in 1994 and the way the claims look now in* (11) *1996 or 1994 may be different because adjustments –*

(12) **Q. Prior to any adjustments.**

(13) *A. (Continuing) – third-party liability,* (14) *collections. Other things might have happened at* (15) *that individual claim level. So that's one of the* (16) *main reasons you wouldn't expect them to be able* (17) *to reconcile to the dollar.*

(18) **Q. All right. In what sense is the data** (19) **source for the HCFA 64 different from the MMIS** (20) **data?**

(21) *A. It is in part the same, and it is in* (22) *part different. It is in part the same because* (23) *part of the HCFA 64 data is taken from the MMIS.* (24) *Claims data are used to calculate the*

(1) *expenditures. For those individual line items* (2) *that are described as type of service, all those* (3) *things that go into Line 6, those come from a MARS* (4) *report from the MMIS. But in addition, there's* (5) *other data sources in addition to the claims data* (6) *other than things like prior period adjustments,* (7) *for example, that are used to adjust that Line 6* (8) *number to Line 11.*

(9) **Q. Is that another way of saying that there** (10) **are additional categories of expenditure included** (11) **in some line items in the HCFA 64 reports that are** (12) **not reflected in the claims data?**

(13) *A. I don't necessarily – I don't think it* (14) *would be – the line items that I know of that are* (15) *not directly taken from the claims data would be* (16) *those bottom-line adjustments. And I also believe* (17) *a disproportionate share comes from a secondary* (18) *source. So if you're just looking at those things* (19) *above Line 6, it would be a disproportionate* (20) *share. That would be the only one that wasn't* (21) *reflected in a claims data.*

(22) **Q. Did you attempt to reconcile the claims** (23) **data together with the disproportionate share** (24) **payments with Line 6 of the HCFA 64 reports?**

(1) *A. I believe we looked at some of those* (2) *numbers, yes.*

(3) **Q. Was it possible to do it?**

(4) *A. I'd have to – I'd have to go back and* (5) *look to see. Again, you wouldn't expect*

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those (6) numbers to match. On face value you would not (7) expect them to match because you're really talking (8) about two different databases. Even though they (9) both come from the claims data, the claims (10) database generated in 1996 is going to be a (11) different animal than the claims database that (12) came out in 1994.

(13) **Q. For the same time period?**

(14) *A. For the same time period.*

(15) MR. YOUNG: Is this a good time for a break?

(16) MR. BIERSTEKER: If you want to, that's (17) fine.

(18) (Short recess.)

(19) BY MR. BIERSTEKER:

(20) **Q. Now, for some years you didn't have HCFA (21) 64 reports available, right?**

(22) *A. That's correct.*

(23) **Q. For the years 1970 to 1983 you did not (24) have the HCFA 64 reports themselves, right?**

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(1) *A. That is correct.*

(2) **Q. You did, however, have information from (3) a federal government document that laid out the (4) Line 6 HCFA 64 expenditures for those years, (5) right?**

(6) *A. That is correct.*

(7) **Q. And in order to present the cost (8) information to Dr. Max, you estimated what the (9) Line 11 expenditures on the HCFA 64 report for (10) those years would be, right?**

(11) *A. That is correct.*

(12) **Q. Okay. So we don't have actual total (13) expenditures for the years 1970 to 1983 in Exhibit (14) 1, right?**

(15) *A. Actually if you mean Line 11 –*

(16) **Q. 11.**

(17) *A. (Continuing) – we have Line 6 (18) adjusted.*

(19) **Q. And that adjustment was made just by (20) comparing Line 6 to Line 11 for the years in which (21) you did have the HCFA 64s, computing a percentage, (22) taking the average, and applying it to all of (23) those years, right?**

(24) *A. Yes, that's correct.*

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(1) **Q. Okay. What are the categories of (2) expenditures used in the SAMMEC 2.1 analysis?**

(3) *A. Hospital, physician, medications, (4) nursing homes, other professionals and other (5) categories, other services.*

(6) **Q. Okay. And the other services categories (7) are actually excluded from Dr. Max's damage (8) computation; is that right?**

(9) *A. As I understand it, yes. She asked for (10) us to categorize those separately.*

(11) **Q. Do you know how SAMMEC defines each of (12) the categories hospital, nursing home, et cetera?**

(13) *A. In our course of providing the data to (14) Dr. Max, Dr. Max described to us how those (15) categories were defined. We worked with her on (16) describing how they were defined in the HCFA 64s, (17) and we provided her with information on how they (18) were defined. And based on our conversations with (19) her about how SAMMEC defined them, we provided her (20) with the crosswalk, which you see. She approved (21) how the HCFA 64s were mapped into the SAMMEC.*

(22) **Q. Is the situation in which you presented (23) Dr. Max with options?**

(24) *A. There were a number of iterations of the*

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(1) *crosswalk, so changes were made based on her (2) review.*

(3) **Q. Are the definitions that you used to (4) define hospital, nursing home, physician, (5) medications and other professional services the (6) same as the definitions used in SAMMEC 2.1?**

(7) *A. According to Dr. Max they are.*

(8) **Q. Okay. Have you attempted to examine (9) that issue at all?**

(10) *A. Not independently of Dr. Max, no.*

(11) **Q. Do you know based on your conversations (12) with Dr. Max or otherwise what is included in the (13) SAMMEC definition of nursing homes?**

(14) *A. The SAMMEC definition of nursing homes (15) for purposes of what we did was defined in terms (16) of the type of service expenditures from the HCFA (17) 64s. So I could define it as type of service, (18) skilled nursing facility, on the HCFA 64; type of (19) service, intermediate care facility. I couldn't (20) define it as SAMMEC Definition 1 is this.*

(21) *Dr. Max described it to us as what (22) nursing home defined and said, Find me how it's (23) defined in this data; and then she looked at (24) both.*

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(1) **Q. Do you know whether the SAMMEC (2) definition of nursing home includes anything other (3) than room and board?**

(4) *A. I do not.*

(5) **Q. Now, Dr. Vince Miller also uses a (6) breakdown of expenditures by service category, (7) correct?**

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(8) *A. Yes, he does.*
(9) **Q. Is the definition that he employed the** (10) **same as that which you employed in Exhibit 1?**
(11) *A. I don't know because we didn't have to* (12) *organize the data for Dr. Miller. We only* (13) *provided him with the data tapes.*
(14) **Q. Well, actually earlier you provided him** (15) **with the same crosswalks and summary tapes that** (16) **were used at one time for Exhibit 1, right?**
(17) *A. We provided him with a crosswalk* (18) *earlier, but it was based on a very initial* (19) *definition of the categories.*
(20) **Q. Do you know why Dr. Miller decided to go** (21) **ahead and do his own breakdown of expenditures** (22) **rather than relying on Tucker Alan?**
(23) *A. You'd have to ask him. I think it was a* (24) *decision with counsel.*

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(1) **Q. Have you compared at all the definitions** (2) **that Dr. Miller used to the definitions that you** (3) **used in developing Exhibit 1?**
(4) *A. No.*
(5) **Q. Why don't we turn then to Exhibit 1. Is** (6) **this all the information you ever provided Dr. Max** (7) **on these subjects?**
(8) *A. Uh-huh, yes.*
(9) **Q. Now, I do note that there's references** (10) **in here periodically – in fact, on the very first** (11) **page of the exhibit – to computer disks. Do you** (12) **see that?**
(13) *A. Yes.*
(14) **Q. Okay. Do the computer disks contain any** (15) **information that's not reflected in these paper** (16) **documents?**
(17) *A. No.*
(18) **Q. Is it possible from the computer disk to** (19) **determine formulas that you may have used in order** (20) **to develop the spreadsheets that aren't apparent** (21) **on the face of these documents?**
(22) *A. I don't believe so. I believe that what* (23) *we sent was the actual final spreadsheet.*
(24) **Q. No, I understand that. But the final**

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(1) **spreadsheet doesn't necessarily reflect how the** (2) **numbers on the spreadsheet were derived, correct?**
(3) *A. I don't – I don't think that they were* (4) *in the same spreadsheet.*
(5) **Q. That what were in the same spreadsheet?**
(6) *A. The formulas.*
(7) **Q. So the formulas would not be reflected** (8) **then in Exhibit 1?**
(9) *A. Actually I'd have to look. No, they're –* (10) *I think I am – I think all of the information is* (11) *reflected in here.*
(12) **Q. Okay. Let me ask – I don't believe** (13) **that's the case, so that's why I'm pursuing it.**
(14) *A. Okay.*
(15) **Q. There's a reference here to, for** (16) **example, links on the first page of Exhibit 1.**
(17) *A. Okay.*
(18) **Q. And those would be formulas, right?**
(19) *A. I think it may be links to other* (20) *information. That's how I understand it, that* (21) *there are other work sheets, other files.*
(22) **Q. It shows you how to get from one file to** (23) **another file?**
(24) *A. Right, right.*

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(1) **Q. Does it show how the data are** (2) **manipulated to go from one file to another file?**
(3) *A. I'm actually not sure.*
(4) **Q. Okay. Well, if you could undertake to** (5) **determine whether or not there are – there is** (6) **information on the computer disks, as I believe is** (7) **the case, that are not reflected in Exhibit 1; and** (8) **if so, if you can provide us with the computer** (9) **disks that were, in fact, apparently provided to** (10) **Dr. Max.**
(11) MR. YOUNG: What are you looking for, just –
(12) MR. BIERSTEKER: There are computer disks (13) that accompany the paper documents that went to (14) Dr. Max. I think there's additional information (15) on the disks, such as formulas, that are not (16) reflected in the output basically, these (17) spreadsheets. That would be useful to have. And (18) if you could see your way clear to giving those to (19) us, those computer disks, that would be great.
(20) Is that a request that you will take (21) under advisement?
(22) MR. YOUNG: Yes.
(23) MR. BIERSTEKER: All right. When do you (24) think you could let me know?

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(1) MR. YOUNG: Just as quick as you can get me (2) on our list –
(3) MR. BIERSTEKER: All right.
(4) BY MR. BIERSTEKER:
(5) **Q. If you could turn to the first table,** (6) **which these pages aren't numbered so it bears the** (7) **legend at the bottom MAXCAT.xls 1984 dated March** (8) **10th, 1997.**

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(9) **Do you see that page?**
(10) *A. Uh-huh.*
(11) **Q. It's about the fourth page into the** (12) **exhibit. And it is titled at the top Mississippi** (13) **Tobacco Litigation, MMIS, Recategorization of HCFA** (14) **64 Expenditure Data to SAMMEC Categories, State** (15) **Fiscal Year 1984?**
(16) *A. Uh-huh.*
(17) **Q. Okay. We're on the same page. I have** (18) **one question regarding this page.**
(19) *A. Yes.*
(20) **Q. You see on the left-hand column where** (21) **you have the HCFA 64 categories, and you go to** (22) **Line Item 4, HCFA Line Item No. 4?**
(23) *A. Yes.*
(24) **Q. And HCFA Line Item No. 4 in this table**

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(1) **is the intermediate care facility, dash, mentally** (2) **retarded.**
(3) *A. Uh-huh.*
(4) **Q. And then I take it that intermediate** (5) **care facility for the mentally retarded is then** (6) **divided into three subcategories?**
(7) *A. Yes.*
(8) **Q. Okay. The subcategory "other" would** (9) **also then be an intermediate care facility for the** (10) **mentally retarded?**
(11) *A. No. That would be – actually what it* (12) *should be labeled as is intermediate care facility* (13) *service. And then it should be public providers,* (14) *mentally retarded; private providers, mentally* (15) *retarded; and other. Other refers to intermediate* (16) *care facility, which was I think prior to 1991 a* (17) *federal category of service. There were two* (18) *levels of nursing facility, skilled nursing* (19) *facility and intermediate care facility; and then* (20) *after '91 it became nursing facility; they were* (21) *combined. So what this category actually is is* (22) *intermediate care facility.*
(23) **Q. So this is a line item then that is just** (24) **mislabeled in the audited HCFA 64s?**

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(1) *A. Right. Actually it's mislabeled on –* (2) *in terms of the "other." The "other" should be* (3) *ICF only, not ICF MR. So it is correctly assigned –*
(4) **Q. It's correctly assigned?**
(5) *A. (Continuing) – to the nursing home.*
(6) **Q. I understand.**
(7) *A. Right.*
(8) **Q. Okay. Let's turn in a few more pages to** (9) **the same kind of chart but this year for the year** (10) **1994. Do you see that?**
(11) *A. Uh-huh.*
(12) **Q. Now, I see that one of the line items** (13) **you included in other professional services in the** (14) **second column –**
(15) *A. Yes.*
(16) **Q. (Continuing) – was other care** (17) **services.**
(18) **What are other care services?**
(19) *A. I believe – I believe that the State of* (20) *Mississippi includes personal care services in* (21) *this other care services category. Other than* (22) *that I'd have to go back and look at the* (23) *documentation to determine what else was in* (24) *there.*

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(1) **Q. What are personal care services?**
(2) *A. Personal care services are services* (3) *provided to individuals in their home to assist* (4) *them with the activities of daily living.*
(5) **Q. Is that different than home health** (6) **services then?**
(7) *A. Yes.*
(8) **Q. How is it different?**
(9) *A. Home health services are usually more of* (10) *a nursing function in terms of administering* (11) *medications and other specific clinical functions* (12) *that a nurse might do whereas personal care* (13) *services is housekeeping, toileting, bathing,* (14) *those kinds of things.*
(15) **Q. All right. You said you'd go back and** (16) **look at the documentation. Was there some** (17) **documentation that you relied upon in order to** (18) **determine what was included or excluded in the** (19) **different line items on the HCFA 64?**
(20) *A. That would be the HCFA 64 form* (21) *documentation itself.*
(22) **Q. Is there a manual or something that –**
(23) *A. Yes. The state medicaid manual.*
(24) **Q. Was it a state or a federal publication?**

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(1) *A. It's a federal publication, but it's* (2) *called the state medicaid manual.*
(3) **Q. Got you. Now, also on this page, if** (4) **you'll look up near the top, there's something** (5) **called the DSH adjustment.**
(6) *A. Uh-huh.*
(7) **Q. I take it that refers to** (8) **disproportionate share payments?**
(9) *A. Yes.*
(10) **Q. Who decided to include disproportionate** (11) **share payments in the different totals used to** (12) **compute damages?**

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(13) *A. I'm sorry. I don't understand what you* (14) *mean by the "different totals."*
(15) **Q. Well, I mean, who decided to include** (16) **disproportionate share payments in the totals that** (17) **were used for purposes of computing damages?**
(18) *A. It was reflected as a medicaid* (19) *expenditure so we included it in with medicaid* (20) *expenditures.*
(21) **Q. Well, what are disproportionate share** (22) **payments?**
(23) *A. Disproportionate share payments are* (24) *payments made by the medicaid agency to hospitals*

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(1) *for purposes of reimbursing them for the* (2) *disproportionate number of – disproportionate* (3) *size of their medicaid and indigent care* (4) *populations. It's a form of an inpatient hospital* (5) *payment because it's specifically relevant to* (6) *inpatient hospital services.*
(7) **Q. Do you know if the number reflected in** (8) **these schedules is a gross or a net number for the** (9) **disproportionate share payments?**
(10) *A. I'm sorry. I don't know what you mean* (11) *by gross or net.*
(12) **Q. Okay. Well, sometimes hospitals make** (13) **donations or transfers of monies to medicaid,** (14) **right?**
(15) *A. In terms of – in terms of what's* (16) *reflected on a HCFA 64?*
(17) **Q. No. They just do, don't they?**
(18) *A. Could you repeat the question?*
(19) **Q. In your experience with the healthcare** (20) **system and in particular with medicaid, do you** (21) **know whether or not hospitals sometimes make** (22) **donations or other transfers of money to medicaid** (23) **programs in the various states?**
(24) *A. Yes.*

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(1) **Q. Okay. Do you know if they did so at any** (2) **time in Mississippi?**
(3) *A. I do not know. I did not look at that* (4) *issue.*
(5) **Q. Do you have any knowledge of there being** (6) **any relationship between the donations and** (7) **transfers made by hospitals to medicaid programs** (8) **in various states and the disproportionate share** (9) **payments that the hospitals receive?**
(10) *A. In general I understand that in some* (11) *states they are related. But in terms of this* (12) *number, I don't know anything specific related to* (13) *donations.*
(14) **Q. Okay. Do you know if this number takes –** (15) **if any line item on the HCFA 64 report takes into** (16) **account donations or transfers that might have** (17) **been made by hospitals in Mississippi to** (18) **Mississippi medicaid?**
(19) *A. At this time, no, I do not.*
(20) **Q. Why didn't you pursue that issue?**
(21) *A. We – I don't think it was ever* (22) *identified as an issue to us.*
(23) **Q. You just didn't think about it?**
(24) *A. Well, we – the HCFA 64 represent*

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(1) *expenditures made by the state for these* (2) *services. We didn't pursue any issues as to how* (3) *these services were financed.*
(4) **Q. Do you think it's immaterial whether the** (5) **state received donations for transfers of monies** (6) **from the hospitals that may be related to the** (7) **disproportionate share payments?**
(8) *A. I'm not–*
(9) MR. YOUNG: I object to the form. What do (10) you mean "immaterial," to what?
(11) BY MR. BIERSTEKER:
(12) **Q. You can answer if you understand the** (13) **question.**
(14) MR. YOUNG: Object to the form.
(15) THE WITNESS: If we're measuring expenditure (16) data, all expenditures are financed from some (17) source or another. So if these are recognized as (18) expenditures from the medicaid program, there (19) would be no reason for us to evaluate how they (20) were financed. We weren't interested in how they (21) were being financed. We were interested in how (22) much their records spent.
(23) BY MR. BIERSTEKER:
(24) **Q. Okay. So let me get this straight. If –**

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(1) **I mean, this is just a hypothetical that I know** (2) **does not obtain in the real world, but I'm just** (3) **trying to establish the principle.**
(4) **If Mississippi medicaid recipients** (5) **reimbursed the Mississippi medicaid program 100** (6) **percent for every healthcare claim that they** (7) **incurred, would the State of Mississippi in your** (8) **view still be damaged?**
(9) MR. YOUNG: Are you asking her opinion, (10) Peter?
(11) MR. BIERSTEKER: Well, yeah, I guess so.
(12) THE WITNESS: I don't have an opinion on (13) damage calculations. We were asked to provide (14) summaries of expenditure data as reflected in (15) expenditure data

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sources. We were not asked to draw any conclusions.

BY MR. BIERSTEKER:

Q. As part of developing this conceptual analysis plan, did you evaluate the appropriateness of what you had been asked to do?

A. Yes.

Q. And did you think it was appropriate to focus only on transfers that Mississippi medicaid made but not to consider transfers that

Mississippi medicaid may have received?

A. In our course of business, when we look at expenditures, whether it's for developing reimbursement systems or developing the cost of programs, we look at information as to how much the state spent for services.

Disproportionate share hospital payments are a payment for an inpatient hospital service so we would have no reason to look at where those are financed from. That is a financing issue as we have done our work in the past and as we applied it to this work.

Q. And so as far as you're concerned then, any payments that hospitals may have made to the Mississippi medicaid program are irrelevant?

MR. YOUNG: Object to the form.

THE WITNESS: If you're measuring expenditures by the medicaid program for services, what they actually paid for services, and that's what you're measuring, then, no, it's not an issue that we should have taken into consideration.

BY MR. BIERSTEKER:

Q. If you wanted to – how did you get to Chicago?

A. I drove.

Q. Let's say you flew. If you bought a plane ticket to get to Chicago today for your deposition and you put it on your credit card and Tucker Alan then reimburses you, what's the cost to you of that plane ticket?

A. It would be ultimately zero.

Q. Okay. What's your expenditure for that plane ticket?

A. My personal expenditure would be zero.

Q. If you wanted to know what the State of Mississippi's expenditures were for disproportionate share payments, wouldn't you then have to consider payments made by the hospitals, if any, to Mississippi medicaid in connection with those disproportionate share payments?.

MR. YOUNG: Object to the form. Are you insinuating or inferring that the hospitals are not part of the State of Mississippi?

MR. BIERSTEKER: I'm not implying or inferring anything.

MR. YOUNG: Well, give her a definition of State of Mississippi.

BY MR. BIERSTEKER:

Q. You may define it, Ms. Nathan, however you wish, and then tell me how you defined it.

A. We did not look at the issue of who paid for the dollars that went into the payments, the expenditures. We looked at the expenditures for the services by the medicaid program. There are a number of sources of revenue that goes into finance these programs.

Q. I understand that. I'm asking about right now a specific one. And I'm not sure you answered my question.

In the hypothetical that we talked about with your plane ticket, you said your personal expenditure was zero, right?

A. Yes.

Q. Okay. If Mississippi medicaid receives payments from the hospitals, whether they're part of Mississippi or not, in connection with disproportionate share payments, don't those monies received have to be taken into account to determine what the expenditures for the State of Mississippi were?

MR. YOUNG: I'm going to object again. I

think this is starting to get into motions in limine. To the extent she can answer.

THE WITNESS: Not according to the definition of expenditure data for services that we were asked to provide.

BY MR. BIERSTEKER:

Q. What was that definition of expenditures that you were asked to provide?

A. Expenditures made by the Mississippi medicaid program for services, medical services in its – in its covered services. I don't want to limit it to medical because there are other services.

Q. All right. Let's move on. The next

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(15) group of charts in Exhibit 1 have as part of the (16) heading the "Adjusted Recategorization." It says (17) at the bottom Line 6 to Line 11 comparison?
(18) *A. Uh-huh.*
(19) Q. And there's a series of those tables.
(20) *A. Can you hold it up again?*
(21) Q. I can actually hand it to you.
(22) *A. Okay.*
(23) Q. And the page just for the record that (24) we're looking at is Mississippi Tobacco

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(1) Litigation, Annual HCFA 64 Expenditure (2) Information, Adjusted Recategorization for State (3) Fiscal Year 1984.
(4) Now, I take it what you're doing here is (5) you're going from Line Item 6 in the left column (6) to Line Item 11 in the right-hand column and (7) you're showing the adjustments that are made along (8) the way?
(9) *A. Right. I would – the components of* (10) *Line Item 6.*
(11) Q. All right. And Column B is an (12) allocation of coinsurance and deductibles, group (13) health plan, and other health insurance premiums (14) to the other line items on this page? I mean, it (15) wasn't actually done on this particular page, but (16) that's what that column is there for?
(17) *A. That is correct.*
(18) Q. Okay. And Column C is a period (19) adjustment; that's where that's reflected?
(20) *A. That's correct.*
(21) Q. Okay. Now, you did the allocation of (22) the total prior period adjustment among the (23) different categories, the different line items on (24) this page?

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(1) *A. We did not determine the allocation.* (2) *There is a form on the HCFA 64 called a 64.9p* (3) *where it's actually reported by the individual* (4) *line item. So, for example, we did not determine* (5) *that of that 1,419,000, that 1,435,000 should go* (6) *to hospital. That was what was actually* (7) *identified.*
(8) Q. Okay. And then I take it Column E (9) relates to the bottom-line adjustments to which we (10) referred earlier exclusive of the prior period (11) adjustment?
(12) *A. Correct.*
(13) Q. And, again, were those allocations ones (14) that you obtained from some source document or (15) were those ones that you made?
(16) *A. Those were ones that we made.*

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(17) Q. Okay. And on what basis were those (18) allocations made?
(19) *A. We made those allocations based on the* (20) *percentage of expenditures in each type of service* (21) *to the Line 6, which would be the totals for the* (22) *type of service. We basically allocate them* (23) *according to –*
(24) Q. Proportional?

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(1) *A. Right, proportion.*
(2) Q. Did you empirically validate the (3) assumption that the bottom-line adjustments should (4) be allocated proportionately among the other line (5) items?
(6) *A. What do you mean by "empirically* (7) *validate"?*
(8) Q. Well, did you attempt to determine in (9) any year how those expenditures were, in fact, (10) distributed among these different categories?
(11) *A. We didn't have any data available to us* (12) *at the time that would have allowed us to do* (13) *that.*
(14) Q. Okay. So because you didn't have the (15) data, you haven't been able to validate whether or (16) not that distribution, in fact, reflects the (17) allocation of those monies accurately?
(18) MR. YOUNG: Object to the form.
(19) THE WITNESS: I think that the approach that (20) we took was accurate given the information we (21) had. It wasn't –
(22) BY MR. BIERSTEKER:
(23) Q. But you haven't validated the approach, (24) right?

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(1) *A. We didn't have –*
(2) MR. YOUNG: Object to the form. If her (3) experience is – you tell her how she's supposed (4) to validate it. I mean, if her experience allows (5) her to validate it, then she has.
(6) BY MR. BIERSTEKER:
(7) Q. Because you didn't have the data you (8) couldn't empirically validate whether or not the (9) allocations made here, in fact, reflect the (10) allocation of these bottom-line adjustments in (11) reality?
(12) *A. Because we did not have the data, yes.*
(13) Q. Okay. All right. Turning to the next (14) page I wanted to ask you about, which is the chart (15) that looks like this.
(16) *A. Uh-huh.*
(17) Q. And it is entitled for the record (18) Mississippi Tobacco Litigation, HCFA 64 (19) Expenditure Data, State Fiscal Years 1970 - 1996. (20) At the bottom it

says "HCFA 64.xls:summary 1970-95," correct?
A. *Yes.*
Q. Okay. Now, based on our discussion earlier, do I understand that the figures under

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HCFA 64 expenditures Line 11 for the years 1970 to 1983 are the estimates we talked about?
A. *That is correct.*
Q. Okay. If you'll turn to the next page when you – I take it what this series of tables reflects is an adjustment from the federal year to the state fiscal year?
A. *That is correct.*
Q. Okay. Now, HCFA 64 reports are generated quarterly, right?
A. *That is correct.*
Q. Okay. But here you use a percentage allocation to change the fiscal year from the federal to the state?
A. *That is correct.*
Q. Okay. Why didn't you use the HCFA 64 reports for the appropriate quarters included in the state fiscal year instead of using this percentage estimation process?
A. *We didn't have the HCFA 64 forms for 1970 through 1983.*
Q. Okay. Got you. Did you compute percentages for the years in which you had the HCFA 64s?

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A. *No, we did not.*
Q. Okay. If you'll turn next to your – I guess it's the next tab where you do the ICD-9 analysis.
A. *Can we take a little break, bathroom break?*
Q. Sure. Let's try to keep it short, though, so that Mr. Young can get his plane.
(Short recess.)
BY MR. BIERSTEKER:
Q. Now, this ICD-9 analysis, you broke it out into three age categories?
A. *Yes.*
Q. Okay.
A. *Sorry. You're on the letter. You're on the letter?*
Q. Well, yes. You broke it out Age 0 to 18, 19 to 34 and 35 plus?
A. *That's correct.*
Q. Okay. Why did you break it out 0 to 18 and 19 to 34 since everybody under age 35 is excluded from the damage calculation?
A. *We were directed to do this by Dr. Max.*
Q. Do you have any understanding why she

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gave that direction?
A. *I don't recall, but I know explicitly that she did tell us to do all three.*
Q. Now, you did not break out the over age 35 expenditures into the 35 to 64 year old and 65 plus categories, right?
A. *That's correct.*
Q. And was that, again, at Dr. Max's direction?
A. *That's correct.*
Q. Do you have any understanding why she did that?
A. *I do not.*
Q. You know, of course, that she estimates damages separately for those two age groups, right?
A. *I'd have to review her report.*
Q. What is the definition of a primary diagnosis in the MMIS claims data?
A. *There's a field in the MMIS claims data called primary diagnosis. It is usually defined as the preeminent diagnosis or the final diagnosis for a given service, related to a given service.*
Q. And what interpretation – there's also

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a field for secondary diagnosis, right?
A. *Yes.*
Q. What interpretation does that give?
A. *Any additional diagnoses that at the time are relevant to the person's condition.*
Q. Okay. Does it mean that expenditures were incurred on account of that second condition?
A. *As we have in the past interpreted it based on our conversations with individuals knowledgeable about diagnoses, that, yes, there could be some relation to expenditures for those diagnoses.*
Q. Is there necessarily a relationship?
A. *I don't know if I'd give an absolute one way or another. As we understood it by – from Dr. Max, it was important to include the secondary diagnosis.*
Q. Is it your testimony that it was Dr. Max's decision to include secondary diagnosis?
A. *No, not – we discussed it with her, and she ultimately made the decision to include secondary diagnosis; but we*

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discussed primary and (23) *secondary with her.*

(24) **Q. Did you make a recommendation to her?**

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(1) *A. In terms of the options, again, primary* (2) *or primary and secondary.*

(3) **Q. Did you again say what the advantages** (4) **and disadvantages of doing it – did you – as I** (5) **understand it, ultimately if one of the disease** (6) **categories identified by Dr. Max as being related** (7) **to smoking was either a primary or a secondary** (8) **diagnosis, then all of the dollars associated with** (9) **that claim were put into a smoking-related** (10) **diagnosis and included in the damage estimate,** (11) **right?**

(12) *A. That is correct.*

(13) **Q. Okay. Now, you could have used only** (14) **primary diagnoses, right?**

(15) *A. We could have.*

(16) **Q. All right. In presenting options to Dr.** (17) **Max, did you explain what advantages or** (18) **disadvantages the method that was ultimately** (19) **adopted had?**

(20) *A. Yes.*

(21) **Q. Okay. What are the advantages first of** (22) **including both primary and secondary diagnoses in** (23) **the damage calculation?**

(24) *A. In our experience, the primary diagnosis*

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(1) *sometimes is the first diagnosis. Maybe it's the* (2) *one that was assigned in the emergency room;* (3) *perhaps it was the one that was assigned upon, you* (4) *know, the initial part of the visit.*

(5) *Later on in a hospital stay, for* (6) *example, they might have identified another* (7) *diagnosis and listed it as a secondary diagnosis.* (8) *So sometimes it reflects the order in which the* (9) *diagnosis takes place, but really the care is more* (10) *oriented towards the secondary diagnosis than the* (11) *primary diagnosis. You do not see a primary and* (12) *secondary diagnosis on every claim.*

(13) **Q. And sometimes I take it the secondary** (14) **diagnosis could be unrelated entirely to the** (15) **expenditures that were incurred, right?**

(16) MR. YOUNG: I'm going to object to the extent (17) she's qualified.

(18) MR. BIERSTEKER: Based on our experience, (19) whatever "our" is.

(20) THE WITNESS: Well, based on our experience, (21) we include the secondary diagnosis when we're (22) looking at diagnostic data primarily for the (23) purpose that the secondary diagnosis is often used (24) to capture the real purpose of the visit.

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(1) BY MR. BIERSTEKER:

(2) **Q. I don't believe you've answered my** (3) **question.**

(4) **My question was the secondary diagnosis** (5) **might or might not be a reason for any** (6) **expenditures associated with a particular claim,** (7) **right?**

(8) *A. I don't think I'm – as it's been* (9) *explained to us in the course of our work, someone* (10) *could have a secondary diagnosis that might not be* (11) *the reason for their expenditures but would have* (12) *an impact on the medical expenditures.*

(13) **Q. And who did this explaining?**

(14) *A. In our past experience in talking to* (15) *clinicians.*

(16) **Q. Was this at all related specifically to** (17) **the way expenditures are coded by the Mississippi** (18) **medicaid or by the Mississippi Comprehensive** (19) **Health Plan?**

(20) *A. Mississippi medicaid and Mississippi* (21) *Comprehensive Health Plan don't code these* (22) *diagnoses. They come from the providers. So* (23) *we've spoken with the clinical providers to ask* (24) *them how they code, and that's how – in our*

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(1) *previous work.*

(2) **Q. Okay. You spoke to clinical providers.** (3) **Did you speak to any clinical providers in** (4) **Mississippi to determine how they –**

(5) *A. Not specifically.*

(6) **Q. (Continuing) – make adjustments – let** (7) **me finish the question.**

(8) **Did you speak to any clinical providers** (9) **in Mississippi to determine how they make** (10) **allocations of claims to primary or secondary** (11) **diagnoses?**

(12) *A. Not specifically.*

(13) **Q. Okay. Did you generate numbers for both** (14) **options for Dr. Max to consider? Let me ask the** (15) **question differently.**

(16) **Do you know what difference it makes** (17) **that you include secondary diagnoses and the** (18) **manner in which you did?**

(19) *A. I'd have to go back and look at the* (20) *documentation.*

(21) **Q. What documentation?**

(22) *A. Well, the output.*

(23) **Q. What output?**

(24) *A. That – I would have to go look to see*

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(1) *if there was output, if there was a primary*

versus (2) *a primary/secondary option.*

(3) **Q. Okay. If such an analysis was done,** (4) **would it be included in Exhibit 1?**

(5) *A. No. It would have been included in our* (6) *conversations with Dr. Max.*

(7) **Q. Do you have any recollection now one way** (8) **or the other whether or not you did that kind of** (9) **analysis, looking at the difference it would make** (10) **if you included only primary diagnosis?**

(11) *A. I don't have a recollection of the* (12) *output of that analysis.*

(13) **Q. Do you have a recollection of whether** (14) **you did it?**

(15) *A. I know that we looked at what was in the* (16) *secondary diagnosis field, and I do know – again,* (17) *I can't be specific about any percentages; but the* (18) *amount of claims for the secondary diagnosis field* (19) *was even populated, meaning it had a value that* (20) *was low. So from that I would have to – well, I* (21) *couldn't conclude anything without looking to see.*

(22) **Q. Right. You'd need to know the dollar** (23) **amounts?**

(24) *A. Yeah, I'd need to know dollar amounts.*

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(1) **Q. You list or you say that a significant** (2) **number of claims for ambulance, drug and** (3) **professional crossover didn't have any ICD-9 codes** (4) **associated with them?**

(5) *A. That's correct.*

(6) **Q. What percentage approximately do you** (7) **recall of nursing home expenditures that had an** (8) **ICD-9 code associated with them?**

(9) *A. I right now do not remember that* (10) *percentage.*

(11) **Q. Okay. Do you remember approximately** (12) **what it was, whether it was high or low or –**

(13) *A. No. I remember it was not – it was not* (14) *in this percentage of the 99 percent for ambulance* (15) *and drug and professional crossover.*

(16) **Q. So it was something less than –**

(17) *A. Yes.*

(18) **Q. (Continuing) – 99 percent excluded?**

(19) *A. Right.*

(20) **Q. Did you talk to anybody about the** (21) **interpretation of the primary and secondary** (22) **diagnosis specifically as it relates to nursing** (23) **homes?**

(24) *A. No, we did not.*

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(1) **Q. Did you talk to anybody outside of** (2) **Mississippi concerning that issue?**

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(3) *A. Not for purposes of this analysis, no.*

(4) **Q. Well, did you for the purpose of any** (5) **analysis?**

(6) *A. With regard to this litigation, no.*

(7) **Q. Okay. Do you know one way or the other** (8) **whether the primary diagnosis listed in connection** (9) **with nursing home stays has any relationship** (10) **whatsoever to the reason why the person was** (11) **admitted to the nursing home in the first** (12) **instance?**

(13) *A. That wasn't something that we looked at,* (14) *so no.*

(15) **Q. You allocated expenditures for claims** (16) **that had no ICD-9 code as well as for the nonclaim** (17) **specific amounts, the prior period adjustments and** (18) **the third-party liability recovery, et cetera.** (19) **Two different ICD-9 codes, right?**

(20) *A. Yes.*

(21) **Q. And you did that based upon information** (22) **that you had for all types of services, right?**

(23) *A. For all types of ICD-9 codes included in* (24) *our analysis.*

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(1) **Q. Right. Regardless of the nature of the** (2) **expenditure?**

(3) *A. Right.*

(4) **Q. Whether it was a hospital or a doctor or** (5) **whatever?**

(6) *A. Right.*

(7) **Q. Okay. Did you examine the percentage of** (8) **expenditures for which there was listed a smoking** (9) **related diagnosis within each service category?** (10) **Do you understand that question?**

(11) *A. No.*

(12) **Q. Okay. Let me try to explain it.** (13) **It is possible that the proportion of** (14) **expenditures, say, for hospitals that list as a** (15) **primary or secondary diagnosis a smoking-related** (16) **disease might be different than the proportion of** (17) **prescription drug expenditures that would have a** (18) **primary or secondary diagnosis a smoking-related** (19) **disease, right?**

(20) *A. I haven't done that analysis, but –*

(21) **Q. That was my question. You haven't done** (22) **a comparison by type of service, hospital,** (23) **ambulatory, et cetera to determine whether or not** (24) **the percentage of expenditures for which you do**

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(1) **have information is constant across those service** (2) **categories, right?**

(3) *A. Percentage – are you talking all about* (4) *the diagnoses?*

(5) **Q. Yes.**
(6) *A. Or are you just talking –*
(7) **Q. I'm talking about the primary or** (8) **secondary diagnosis.**
(9) *A. Okay. So say the question again.*
(10) **Q. The percentage of claims that would list** (11) **a smoking-related disease as a primary or** (12) **secondary diagnosis might not be the same for** (13) **hospital services as it is for physician services** (14) **as it is for prescription drugs, et cetera, right?**
(15) *A. Yes.*
(16) **Q. Okay. So those percentages could differ** (17) **from different – within service categories,** (18) **between?**
(19) *A. Right.*
(20) **Q. And you haven't done a comparison to** (21) **determine whether or not they are relatively the** (22) **same by service category?**
(23) *A. No.*
(24) **Q. But you allocate them assuming that they**

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(1) **are the same in the different service categories,** (2) **right?**
(3) *A. You're talking about allocating the* (4) *ambulance –*
(5) **Q. The ones for which you have no** (6) **information.**
(7) *A. The ambulance, prescription drug, and* (8) *the professional crossover?*
(9) **Q. Well, you allocated more than those** (10) **three categories, didn't you?**
(11) *A. Well, we – we had a two-step* (12) *allocation. The first step was allocating the* (13) *ambulance, prescription drug, and professional* (14) *crossovers. We considered that we had no* (15) *information on diagnoses for those services* (16) *because of the high amount of claims that had* (17) *missing or unusual ICD-9 codes. So we couldn't* (18) *look at ambulatory services, for example, and say* (19) *in this population you would expect 20 percent to* (20) *be in this ICD-9 code and 20 percent to be in this* (21) *ICD-9 and 60 percent to be in this ICD-9 code* (22) *because we had no ICD-9 information for those* (23) *three categories. So we couldn't allocate it* (24) *according to any other percentages.*

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(1) **Q. You couldn't do so within the MMIS data?**
(2) *A. Right.*
(3) **Q. Could you do so from other data sets** (4) **that may have been available?**
(5) *A. As I understand at the time, there were* (6) *no other data sets available with the ICD-9* (7) *information.*
(8) **Q. No other data sets for any program** (9) **whatsoever, I mean whether it's Mississippi** (10) **medicaid or not?**
(11) *A. Well, that we thought would be relevant* (12) *to Mississippi medicaid.*
(13) **Q. So in your judgment then information** (14) **related to the distribution of, say, prescription** (15) **drug expenditures by ICD-9 category from a** (16) **population other than Mississippi medicaid would** (17) **not be useful?**
(18) *A. We didn't look into that at all.*
(19) **Q. And the reason you didn't look into it** (20) **is you didn't think it was useful for that** (21) **population, right?**
(22) *A. We didn't think it would be a practical* (23) *analysis, first of all, because it would involve* (24) *getting claims data from another source. And we*

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(1) *know from our previous experience that that's very* (2) *difficult to do, and it would also involve* (3) *probably doing matching of population* (4) *characteristics; and it really wasn't in the scope* (5) *of what we were asked to do for purposes of this* (6) *data. We thought that it was accurate and* (7) *reasonable enough to allocate the expenditures* (8) *using the percentages of the ICD-9 codes that we* (9) *did know because in some cases we could have* (10) *overestimated that allocation and in some cases we* (11) *could have underestimated.*
(12) **Q. Right. You just don't know one way or** (13) **the other?**
(14) *A. We just don't know one way or the other,* (15) *but we think it would probably balance out.*
(16) **Q. Why? Do you have any reason to believe** (17) **that?**
(18) *A. Well, I know from my experience that* (19) *individuals with cancers use very high cost drugs,* (20) *so you would think that you might want to allocate* (21) *a larger number of expenditures to individuals who* (22) *have cancers and perhaps a lower amount of* (23) *expenditures for prescription drugs to individuals* (24) *who have asthma because the relative cost of the*

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(1) *drugs are lower. That's the kind of thinking that* (2) *went into our allocation.*
(3) **Q. Of course, the predominant disease –** (4) **predominant category of disease are the** (5) **cardiovascular diseases, right?**
(6) *A. If you're looking at –*
(7) **Q. That are smoking related?**
(8) *A. Predominant in terms of –*

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(9) **Q. In terms of expenditures. I mean, we** (10) **can look at –**

(11) *A. They had the highest total expenditures.*

(12) **Q. It's 90 percent, right?**

(13) *A. Right.*

(14) **Q. Approximately; is that right?**

(15) *A. Right.*

(16) **Q. Well, in your experience then are** (17) **prescription drugs to treat heart disease** (18) **relatively more expensive than prescription drugs** (19) **to treat other diseases?**

(20) *A. I would say that they're probably more* (21) *expensive than – probably put them in the same* (22) *category as the cancer drugs as opposed to asthma,* (23) *for example. I mean, there are high cost drugs* (24) *that are used in patient services, and there's a*

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(1) *continuous prescription of drugs for maintenance* (2) *for some of these individuals. But with –*

(3) **Q. Have you done any analysis of those?**

(4) *A. Not with Mississippi medicaid data, no.* (5) *We didn't have that information to do that* (6) *analysis.*

(7) **Q. Have you had any experience in your** (8) **prior work determining the distribution by service** (9) **category of expenditures to different ICD-9 codes?**

(10) *A. Yes.*

(11) **Q. Was the distribution of expenditure by** (12) **service category to ICD-9 codes in your prior work** (13) **about the same across service categories or not?**

(14) *A. I couldn't answer that question without* (15) *going back and looking at the material.*

(16) **Q. Did you examine that material in** (17) **connection with your work here?**

(18) *A. Not specifically, no.*

(19) **Q. You note on the second page of the ICD-9** (20) **a narrative that the percentage of expenditures** (21) **for which you did have information on ICD-9 codes** (22) **that included smoking-related diseases varied from** (23) **year to year and age group to age group.**

(24) **Do you see that? Vary significantly**

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(1) **from year to year and age group to age group on** (2) **the first border dot on this page?**

(3) *A. The first dot?*

(4) **Q. Yes.**

(5) *A. You're referring to the percent of* (6) *expenditures for the ICD-9 – the selected ICD-9* (7) *codes to the total expenditures?*

(8) **Q. Right.**

(9) *A. Yes.*

(10) **Q. And that varied significantly from year** (11) **to year and from age group to age group, right?**

(12) *A. Yes.*

(13) **Q. Did you ever attempt to determine why** (14) **there were those significant variations?**

(15) *A. No.*

(16) **Q. But for the years in which you had no** (17) **MMIS data, you assumed that the percentage of** (18) **expenditures for the selected ICD-9 codes was** (19) **constant, right?**

(20) *A. Repeat the question.*

(21) **Q. For the years in which you did not have** (22) **MMIS data, you assumed that the percentage of** (23) **expenditures within service category and by age** (24) **for the selected ICD-9 codes was constant, right?**

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(1) *A. We only did this analysis for years* (2) *where we had MMIS data.*

(3) **Q. Okay. Dr. Max assumed it was constant,** (4) **didn't she; do you know?**

(5) *A. I don't know.*

(6) **Q. Okay. You were at her deposition,** (7) **though?**

(8) *A. Yeah.*

(9) **Q. Have you read her report?**

(10) *A. Her report?*

(11) **Q. Yes.**

(12) *A. Yes.*

(13) **Q. Now, I just want to make sure I'm** (14) **reading these tables correctly. If you could go** (15) **to the table entitled Mississippi Tobacco** (16) **Litigation, MMIS ICD-9 Analysis Data, Calculation** (17) **of Final Expenditures Based on HCFA-64 Data.** (18) **Fiscal year 1992 is the one I'm looking at.** (19) **There's one for several years.**

(20) *A. Okay.*

(21) **Q. Now, do I read this correctly, these** (22) **columns – for example, if I look at the subtotal** (23) **for neoplasms –**

(24) *A. Yes.*

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(1) **Q. (Continuing) – and for the group over** (2) **age 35 –**

(3) *A. Yes.*

(4) **Q. (Continuing) – it is approximately a** (5) **little less than nine-tenths of 1 percent of the** (6) **total medicaid expenditures?**

(7) *A. Where are you looking at?*

(8) **Q. This column. On that page.**

(9) *A. Okay.*

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(10) **Q. It's a little less than nine-tenths of 1** (11) **percent of expenditures for which you had ICD-9** (12) **codes?**
(13) *A. Which one do we got?*
(14) **Q. Actually total – there you go.**
(15) *A. We're not looking at the right one. Now* (16) *we're looking at the right one.*
(17) **Q. So expenditures for all of the selected** (18) **cancer ICD-9 codes accounted for something less** (19) **than nine-tenths of 1 percent of total Mississippi** (20) **medicaid expenditures in fiscal year 1992; is that** (21) **correct?**
(22) *A. For age 35 and older?*
(23) **Q. For age 35 and older, right.**
(24) *A. That's correct.*

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(1) **Q. And, in fact, it's a lesser percentage** (2) **if you include all the age groups, right?**
(3) *A. Right.*
(4) **Q. Why don't we turn to the Mississippi** (5) **Comprehensive Health Plan.**
(6) **Now, for year – for – in the final** (7) **damage estimate that Dr. Max did, she relies on** (8) **the information presented here which, as I** (9) **understand it, is based on claims paid by the** (10) **Mississippi Comprehensive Health Plan for state** (11) **employees and premiums that the Mississippi** (12) **Comprehensive Health Plan paid for teachers,** (13) **right?**
(14) *A. Which one are you – well, both. If* (15) *you're looking at the SAMMEC and the mortality* (16) *ratio approach – we're talking about both right* (17) *now?*
(18) **Q. Well, we're just getting the totals.**
(19) *A. Oh, okay. Sorry.*
(20) **Q. The total is the same for both** (21) **categories, right?**
(22) *A. Say that question again.*
(23) **Q. The total expenditures for the** (24) **Mississippi Comprehensive Health Plan were**

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(1) **determined by looking at the claims paid for the** (2) **state employees but at the premiums paid on behalf** (3) **of the teachers in the State of Mississippi,** (4) **right?**
(5) *A. Those were two of the components, yes.*
(6) **Q. And it was the premiums that were, in** (7) **fact, paid by the state as opposed to premiums** (8) **that may have been paid by the teachers or** (9) **somebody else?**
(10) *A. That's correct.*
(11) **Q. Now, prior to March 28th, 1997, as I** (12) **understand it, you had based Mississippi** (13) **Comprehensive Health Plan total expenditures on** (14) **premiums paid by the state for state employees,** (15) **right?**
(16) *A. I think that was a previous iteration of* (17) *the data that we gave Dr. Max, yes.*
(18) **Q. Now, when did Tucker Alan receive the** (19) **Mississippi Comprehensive Health Plan claims data?**
(20) *A. I don't remember exactly, but I'd have* (21) *to say it was sometime between summer and fall of* (22) *'96.*
(23) **Q. But it was a long time before March of** (24) **1997?**

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(1) *A. Right.*
(2) **Q. And it was a long time before March 10th** (3) **of 1997?**
(4) *A. Right.*
(5) **Q. So originally then total Mississippi** (6) **Comprehensive Health Plan dollars that were being** (7) **used were limited to the premiums that the State** (8) **of Mississippi paid for state employees and for** (9) **teachers, right?**
(10) *A. Say the question again.*
(11) **Q. Originally your analysis determined the** (12) **dollars to be used in the damage estimate for the** (13) **Mississippi Comprehensive Health Plan by only** (14) **looking at the premiums paid by the State of** (15) **Mississippi for its employees and its teachers?**
(16) *A. Originally meaning –*
(17) **Q. Prior to March 28th, 1997.**
(18) *A. We – we had two data sources. We used* (19) *the claims data.*
(20) **Q. I'm only talking about totals now.**
(21) *A. Right. But are you referring to the* (22) *baseline expenditures as we – as we call it, the* (23) *totals?*
(24) **Q. No. I'm referring to totals. But that**

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(1) **was before they were baseline?**
(2) *A. Well, it's the same thing. We define* (3) *that as baseline expenditures.*
(4) **Q. The baseline expenditure definition** (5) **changed in March of 1997, right?**
(6) *A. Yes.*
(7) **Q. Okay. And earlier the baseline** (8) **definition or the definition, rather, of baseline** (9) **expenditures was based entirely upon the premiums** (10) **paid by the State of Mississippi for healthcare** (11) **insurance for its employees and teachers, right?**
(12) *A. I believe so.*
(13) **Q. Okay. Why was that definition used** (14) **prior to March of 1997?**
(15) *A. That was a determination made in*

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(16) *conversations with counsel.*
(17) **Q. Did you agree that that's the way it** (18) **ought to be done?**
(19) *A. We hadn't done any independent* (20) *evaluation of that issue.*
(21) **Q. And then I take it in March of 1997 it** (22) **changed, the definition of baseline expenditures?**
(23) *A. Yes.*
(24) **Q. Okay. And why did it change?**

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(1) *A. Based on conversations with counsel.*
(2) **Q. And did you form any judgment one way or** (3) **the other whether that change was appropriate?**
(4) **Independently of whatever counsel may have told** (5) **you.**
(6) *A. No.*
(7) **Q. Now, for the SAMMEC analysis you broke** (8) **down the Mississippi Comprehensive Health Plan** (9) **baseline expenditures, which I will just from now** (10) **on refer to as baseline expenditures. You broke** (11) **those down by service category, right?**
(12) *A. For SAMMEC?*
(13) **Q. Yes.**
(14) *A. Actually we used the data in the claims* (15) *database to break it down by SAMMEC category.*
(16) **Q. Right.**
(17) *A. And then adjusted them using the* (18) *baseline expenditures.*
(19) **Q. The totals?**
(20) *A. The totals.*
(21) **Q. Because the claims data didn't reconcile –**
(22) *A. You don't have the breaks down.*
(23) **Q. Excuse me.**
(24) *A. The baseline expenditure sources don't*

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(1) *have the breakdowns by the SAMMEC categories. All* (2) *we have is a total.*
(3) **Q. Right. And you used the claims data to** (4) **make the allocation?**
(5) *A. Right.*
(6) **Q. Again, is the definition of the** (7) **different service categories that you used with** (8) **your crosswalk the same definition as that used by** (9) **SAMMEC?**
(10) *A. The definitions used by – the* (11) *definitions used by SAMMEC, again, were supplied* (12) *to us by Dr. Max. And we looked at how the data* (13) *was defined in the claims data and developed a* (14) *crosswalk. So it was again in consultation with* (15) *the SAMMEC definition supplied by Dr. Max.*

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(16) **Q. Did you ever have those definitions?**
(17) *A. Not aside from what Dr. Max sent us in* (18) *her data request.*
(19) **Q. But she did send you –**
(20) *A. She sent us something written, yes.*
(21) **Q. Okay. And again, do you know whether** (22) **the definitions used in SAMMEC are the same as the** (23) **definitions you employed?**
(24) *A. The definitions I employed for –*

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(1) **Q. The service categories. What** (2) **constitutes a hospital expenditure as opposed to a** (3) **physician expenditure as opposed to a nursing home** (4) **expenditure. Do you know if those definitions in** (5) **SAMMEC are the same as the definitions you used in** (6) **breaking down the Mississippi Comprehensive Health** (7) **Plan expenditures?**
(8) *A. The services are defined in the MCHP* (9) *database as there are different categories of* (10) *services in the MCHP database. We grouped the* (11) *MCHP expenditures into the SAMMEC categories as* (12) *defined for us by Dr. Max. So they're not the* (13) *same because they come from two different sources,* (14) *but we matched them based – it wasn't based on* (15) *what MCHP said. It was based on what SAMMEC* (16) *said.*
(17) **Q. Well, MCHP said nothing, right?**
(18) *A. Well, no. MCHP has definitions of* (19) *services.*
(20) **Q. Service categories?**
(21) *A. Yes, they do.*
(22) **Q. Now, at one point healthcare** (23) **expenditures for dependents of state employees** (24) **were not included in the analysis, right?**

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(1) *A. I don't recall right now. I don't have* (2) *a –*
(3) **Q. They ultimately were included, however,** (4) **right?**
(5) *A. Yes.*
(6) **Q. Did you make the decision or participate** (7) **in the decision to include or exclude claims for** (8) **dependents of state employees?**
(9) *A. We were directed to by counsel.*
(10) **Q. Did you undertake any independent** (11) **evaluation of whether or not that was an** (12) **appropriate thing to do?**
(13) *A. We did not.*
(14) **Q. Now, you had no ICD-9 information** (15) **whatsoever with respect to the teachers, right?** (16) **You had no claims data?**

(17) *A. Not necessarily.*
(18) **Q. Okay.**
(19) *A. As we understood it, there were teacher* (20) *claims in the database. It's just that the field* (21) *that would distinguish teachers from employees was* (22) *masked so there was no way to say here's the* (23) *teacher set and here's the employee set.*
(24) **Q. Gosh. Does that mean we've included**

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(1) **claims for teachers and premiums for teachers?**
(2) *A. Yes. And that's appropriate.*
(3) **Q. It is?**
(4) *A. Yes, it is, because the claims for* (5) *teachers are included with the claims for* (6) *employees. That's what was used to generate the* (7) *percentiles to which you allocate the baseline* (8) *expenditures.*
(9) **Q. I know. But you used claims data – I** (10) **thought – you cannot distinguish claims that were** (11) **paid on behalf of state employees or on behalf of** (12) **teachers, right?**
(13) *A. Not in the claims database, no.*
(14) **Q. Okay. And the claims database includes** (15) **claims for both teachers and state employees?**
(16) *A. Yes.*
(17) **Q. And in determining total expenditures,** (18) **you used the information from the claims database** (19) **in total?**
(20) *A. No, we did not.*
(21) **Q. All right. Well, how then did you break** (22) **out claims paid for state employees versus those** (23) **claims that were paid for teachers in determining** (24) **the total expenditures?**

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(1) *A. We did them together.*
(2) **Q. I thought we just went over this. I** (3) **thought that the baseline expenditures were** (4) **defined as claims paid for state employees, not** (5) **teachers, and that teacher components of the** (6) **baseline expenditures came from premiums paid by** (7) **the State of Mississippi on behalf of the** (8) **teachers?**
(9) *A. It is the sum of the two.*
(10) **Q. Okay. But the claims data includes** (11) **claims paid on behalf of the teachers?**
(12) *A. As well as claims paid on behalf of the* (13) *state employees.*
(14) **Q. Okay. So you are including in the total** (15) **both the claims paid for the teachers and the** (16) **premiums paid on behalf of the teachers?**
(17) *A. No, we are not.*

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(18) **Q. Okay. Tell me why not because I don't** (19) **understand.**
(20) *A. There's two separate components of the* (21) *analysis. If you look at Exhibit 2 and you look* (22) *at the chart that explains MCHP expenditures as a* (23) *percentage of total database expenditures, we use* (24) *the MCHP database, which includes teachers and*

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(1) *state employees, to separate out by age and by* (2) *SAMMEC category the expenditures so that we could* (3) *have a percentage of total expenditures; that is,* (4) *a percentage of total database expenditures.*
(5) **Q. Did the totals that you used for the** (6) **Mississippi Comprehensive Health Plan expenditures** (7) **include any adjustments for third-party liability** (8) **recoveries, fraud abuse, collections, et cetera?**
(9) *A. That was one of the reasons why we used* (10) *in our baseline expenditures the claims as* (11) *reported in the actuarial reports for the state* (12) *employees. That was a retrospective claims* (13) *analysis. They would have had the opportunity to* (14) *take into account those adjustments. If we had* (15) *had that same kind of reports for teachers, we* (16) *probably would have looked at that; but at the* (17) *time actuarial reports for teachers were not* (18) *available to us. So that's why it's a similar* (19) *relationship between the claims and the HCFA 64 as* (20) *the claims and the actuarial reports. We felt* (21) *that that was a generally relied upon summary of* (22) *total expenditures for the year.*
(23) **Q. Okay. My real question, though, is do** (24) **those underlying summaries make these adjustments**

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(1) **or not?**
(2) *A. I'm not sure whether they do it* (3) *specifically or not.*
(4) **Q. I mean, you don't know whether they do** (5) **it implicitly or explicitly or any way, do you?**
(6) *A. I won't use that word.*
(7) **Q. Do you know whether they do or not?**
(8) *A. No, not specifically.*
(9) **Q. All right. Thank you. I was going to** (10) **look at a chart. It looks like this. And it's** (11) **entitled Mississippi Tobacco Litigation, MCHP** (12) **Summary of Expenditure "Baseline Value" (by state** (13) **fiscal year)?**
(14) *A. Uh-huh.*
(15) **Q. Do you see that?**

(16) *A. Uh-huh.*
(17) **Q. And I'm just looking at the page that** (18) **has the years 1987 through 1994 across the top.**
(19) *A. Sure.*
(20) **Q. Do you see that page?**
(21) *A. Yes.*
(22) **Q. Now, this – this actually breaks out** (23) **the premiums incurred by the state for active** (24) **employees and then the claims paid for the state**

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(1) **employee plan for all individuals, right?**
(2) *A. Right.*
(3) **Q. Now, is that total for all individuals** (4) **limited to the total for state employees, or does** (5) **it include the teachers?**
(6) *A. State employees.*
(7) **Q. All right. So what we've got in that** (8) **Line Item D on this page are the claims paid for** (9) **the active state employees and for the retirees** (10) **and for the dependents, right?**
(11) *A. Right.*
(12) **Q. Now, the expenditures on behalf of all** (13) **those categories of state employees, Line Item D,** (14) **was about $70 million in 1990?**
(15) *A. Yes.*
(16) **Q. Okay. And the state only paid about** (17) **forty-one and a half million dollars' worth of** (18) **premiums in that year for the active employees,** (19) **right?**
(20) *A. That's what it appears to be from these* (21) *numbers, yes.*
(22) **Q. Okay. Now, there do you know if the** (23) **state paid the – all of the premiums for the** (24) **state employees, the active state employees or**

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(1) **not?**
(2) *A. I don't recall. I'd have to look at the* (3) *information.*
(4) **Q. Did the state pay any premiums on behalf** (5) **of dependents or retirees?**
(6) *A. I don't recall.*
(7) **Q. Does that matter to you?**
(8) MR. YOUNG: Object to the form.
(9) THE WITNESS: No, not for purposes of (10) determining these expenditures. They were (11) identified for us.
(12) BY MR. BIERSTEKER:
(13) **Q. Do you know whether the premiums paid by** (14) **whomever were enough to cover the claims paid?**
(15) *A. I don't know.*
(16) **Q. Does that matter to you?**
(17) MR. YOUNG: Object to the form.
(18) THE WITNESS: I don't have an opinion on (19) that. I haven't done any analysis to see what (20) that might mean, so –
(21) BY MR. BIERSTEKER:
(22) **Q. Is it important to know that?**
(23) *A. I don't know. I'd have to look at the* (24) *issue. I'm not sure.*

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(1) **Q. Well, under what circumstances would it** (2) **be important and under what circumstances wouldn't** (3) **it?**
(4) MR. YOUNG: I'm going to object to this line (5) of questioning. She's already told you the (6) decision on how those – what expenditures were to (7) be included was a decision by counsel.
(8) THE WITNESS: I don't know. I mean, it's a (9) question that would have to be looked at.
(10) BY MR. BIERSTEKER:
(11) **Q. And that was a determination by counsel,** (12) **and you didn't evaluate it one way or the other?**
(13) *A. Yes. Not in that context, no.*
(14) **Q. There are some – if you turn back a few** (15) **pages in Exhibit 1, you'll come to a page entitled** (16) **Mississippi Tobacco Litigation, SAMMEC Analysis** (17) **Data, MCHP Expenditures as Percentage of Total** (18) **Database Expenditures?**
(19) *A. Right.*
(20) **Q. And there is a date at the bottom of** (21) **that page of March 10th, 1997?**
(22) *A. Uh-huh.*
(23) **Q. Did those percentages change when you** (24) **changed the definition of baseline expenditures?**

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(1) *A. No.*
(2) **Q. And that's because these were derived** (3) **independently from the claims data and didn't** (4) **depend upon the totals, right?**
(5) *A. No. These were derived from the claims* (6) *data.*
(7) **Q. Right. That's what I mean.**
(8) *A. Right.*
(9) **Q. All right. Why don't we move to ICD-9** (10) **for MCHP, but why don't we take perhaps this** (11) **opportunity to grab a sandwich.**
(12) (Discussion off the record.)
(13) (Short recess.)
(14) BY MR. BIERSTEKER:
(15) **Q. Were there ICD-9 codes for the claims in** (16) **the MCHP database?**
(17) *A. Yes, there were.*
(18) **Q. Were there claims that were missing** (19) **ICD-9 codes or that had garbled ones?**
(20) *A. We did that analysis, but overall it*

was (21) less than 3 percent.
(22) Q. Of the total?
(23) A. Of the total. There was no category.
(24) It was like the 99 percent, so –

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(1) Q. Okay. So did you allocate 3 percent (2) based on the 90 some percent, or did you just (3) exclude the 3 percent?
(4) A. No. We just didn't include them.
(5) Q. And those ICD-9 codes were available, I (6) take it, for both the teachers and all the various (7) kind of state employees, retirees and their (8) dependents?
(9) A. All that was in the database, yes.
(10) Q. Do you have any idea whether the State (11) of Mississippi would actually – let me start this (12) over.
(13) Do you have any idea whether Mississippi (14) medicaid would continue to get any transfers or (15) donations from hospitals in the State of (16) Mississippi if it didn't make disproportionate (17) share payments?
(18) MR. YOUNG: The same objection, motion in (19) limine.
(20) BY MR. BIERSTEKER:
(21) Q. You may answer. I don't think it's (22) subject to the motion in limine at all.
(23) A. Ask the question again, please.
(24) Q. Do you have any idea whether the State

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(1) of Mississippi would continue to receive any (2) donations or transfers of funds from hospitals (3) within the state if the state stopped making (4) disproportionate share payments?
(5) MR. YOUNG: Objection. Your first question – (6) that's not the same question you asked as to (7) medicaid the first time, and I'm not sure –
(8) MR. BIERSTEKER: I meant medicaid.
(9) MR. YOUNG: The same objection.
(10) MR. BIERSTEKER: Let me try it one more (11) time.
(12) BY MR. BIERSTEKER:
(13) Q. Do you have any idea whether Mississippi (14) medicaid continued to receive any donations or (15) transfer payments from hospitals within the state (16) if Mississippi medicaid stopped making (17) disproportionate share payments?
(18) MR. YOUNG: The same objection.
(19) THE WITNESS: And I do not.
(20) BY MR. BIERSTEKER:
(21) Q. Okay. I'm now turning to UMMC, the (22) University of Mississippi Medical Center.

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(23) A. Okay.
(24) Q. Now, you received from the University of

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(1) Mississippi Medical Center some schedules with (2) financial data on them, right?
(3) A. Yes.
(4) Q. And the person who prepared those (5) schedules was a Ms. Valerie Box?
(6) A. That is correct.
(7) Q. Did she prepare those schedules at your (8) request?
(9) A. She did not.
(10) Q. Okay. Do you know whether or not these (11) schedules were prepared in the ordinary course of (12) business of the University of Mississippi Medical (13) Center?
(14) A. I don't exactly know the answer to (15) that. I don't know.
(16) Q. Okay. Do you know whether or not those (17) schedules were prepared in connection with (18) litigation?
(19) A. I don't know.
(20) Q. Did you put the legend or privileged and (21) confidential attorney work product on the (22) schedules prepared by – well, actually these are (23) not the spreadsheets that Ms. Box prepared, I take (24) it?

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(1) A. That's correct.
(2) Q. This is a summary of information that (3) she provided to you, right?
(4) A. Right.
(5) Q. Okay. Are the underlying documents that (6) were provided to you by Miss Box – that would be (7) this document?
(8) A. That would be that document.
(9) Q. Okay. And for the record, that's (10) entitled University Hospital, Summary of (11) Uncompensated Services, Fiscal Year 1955 through (12) 1985.
(13) Do you know what source documents Ms. (14) Box may have used to prepare the summaries that (15) were provided to you?
(16) A. Those were attached. I'm sorry, a (17) sample of those were attached.
(18) Q. Did you obtain more than just a sample?
(19) A. No.
(20) Q. Do you know who Ms. Box is?
(21) A. Yes.
(22) Q. Who is she?
(23) A. I can't remember her exact title, but I (24) believe she works in the hospital ac-

counts or

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(1) hospital accounting department at the hospital – (2) at the university hospital.

(3) **Q. Okay. Now, you had some data for the (4) University of Mississippi Medical Center that (5) indicated – that broke down expenditures by (6) different ICD-9 codes, right?**

(7) *A. I believe we did.*

(8) **Q. Okay. And didn't you also have data (9) that broke down expenditures by ICD-9 codes for (10) Forrest General Hospital?**

(11) *A. I believe we did, yes.*

(12) **Q. Did you have data that broke down (13) charity care and bad debts incurred by Singing (14) River by ICD-9 code?**

(15) *A. I believe we did.*

(16) **Q. Now, Dr. Max says in her report that it (17) was not possible to disaggregate expenditures by (18) diagnosis for the uncompensated care; is that (19) right? I mean, that she says it. You've read her (20) reports, correct?**

(21) *A. Yes. Based on our evaluation of the (22) data, we didn't feel that we could generate the (23) numbers that she needed using the data that we had (24) even though it had ICD-9 information. I mean,*

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(1) *just because the diagnosis is in there doesn't (2) necessarily mean we can generate the numbers the (3) way that she gets them.*

(4) **Q. Well, what couldn't she do?**

(5) *A. We couldn't do the same kind of data (6) evaluation that we could do with the claims data (7) for MMIS and MCHP. We couldn't – we couldn't (8) generate numbers that we had as much confidence in (9) as the numbers in MMIS and MCHP because the (10) databases were different. And the nature of these (11) databases are also different. They're not claims (12) data; they're patient accounts data. It's the (13) reverse.*

(14) **Q. Well, isn't that data the best data you (15) have available concerning the breakdown of these (16) expenditures by ICD-9?**

(17) *A. It was the only data we had available (18) for these for ICD-9, but that doesn't necessarily (19) mean we had to use it.*

(20) **Q. Well, I'm wondering whether or not – I (21) mean, in the end what Dr. Max does is a portion of (22) charity care and bad debt expenditures to ICD-9 (23) codes in the same manner as she does medicaid (24) expenditures because she uses the same SAF,**

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(1) **right? Well, let me back up.**

(2) **Dr. Max uses the same SAF for the (3) charity care and the bad debts as she computed for (4) Mississippi medicaid?**

(5) *A. I'd have to look at her report, but I'm (6) pretty sure.*

(7) **Q. And if she does that, implicit in that (8) is that the distribution of expenditures among (9) ICD-9 codes is the same in the charity care and (10) bad debts as it is in the Mississippi medicaid (11) population, right?**

(12) *A. I wouldn't have a conclusion on that (13) because we didn't do that. That was Dr. Max's (14) decision exclusively.*

(15) **Q. All right. Well, first of all, do you (16) know whether the hospitals had any data other than (17) the data reflected in the documents in Exhibit 1, (18) ICD-9 codes and age of patients?**

(19) *A. I have –*

(20) MR. YOUNG: When you say "hospitals," we're (21) talking about all three, right?

(22) MR. BIERSTEKER: Or any three.

(23) THE WITNESS: I don't know.

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(1) BY MR. BIERSTEKER:

(2) **Q. Did you ask directly or indirectly (3) whether they had additional data beyond that (4) reflected in Exhibit 1 that related to ICD-9 (5) codes?**

(6) *A. I believe we – I believe a question was (7) asked what data do you have regarding ICD-9 codes, (8) and that's what was given to us.*

(9) **Q. Did you speak directly with the people (10) at the hospitals?**

(11) *A. I did not.*

(12) **Q. Did anybody from Tucker Alan?**

(13) *A. I believe so.*

(14) **Q. Okay. Who did?**

(15) *A. Wes Grover.*

(16) **Q. Now, you said you couldn't do something, (17) claims data evaluation –**

(18) *A. Uh-huh.*

(19) **Q. (Continuing) – for the hospitals? What (20) did you mean by that?**

(21) *A. I shouldn't have used the word "claims." (22) I should have used the word "data" because we (23) don't – we don't categorize them as claims data. (24) We recognize, first of all, that they're a*

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(1) *different database. The UMMC data, we looked at (2) the contents of the data and tried to make an (3) effort to see what we could do with the data; and (4) we just didn't find that to be a good database for*

purposes of the analyses. In terms of the definitions of the fields and the contents of the fields, it just wasn't suited to this type of analysis.

Q. Was it missing information?

A. In terms of missing values, I don't know that if I can answer that because I don't know if I remember it.

Q. Or missing fields?

A. I don't think it had the fields defined in such a way that we could use them. I think that was one of the issues that we had.

Q. Did it have a field for primary diagnosis?

A. I believe it did.

Q. Okay. Now, why couldn't you use that?

A. I'd have to go back and look at the valuation of the database, but I think the contents or the definition of how that field was used we couldn't have confidence in; that perhaps

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it was consistent throughout the time period or it had been used consistently.

Q. Well, did you know what the definitions were that were used for that field year to year?

A. That was part of the difficulty that we had, was pinning down specific definitions for specific fields.

Q. Okay. Was there anything else that was deficient in the University of Mississippi Medical Center data that prevented you from doing an analysis by ICD-9 code?

A. I don't think I characterized the database as deficient. I think I would characterize it as us not having the full information that we could use so that we could be confident in our output of our analysis.

Q. Okay. Let me ask you this question and maybe it will help: Was it that you thought the data relating to diagnoses in that database were unreliable or not subject to interpretation or just weren't there?

A. They were there.

Q. Okay.

A. But I don't think that we thought that

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they could be interpreted in the way that we need to interpret it for this analysis.

Q. Okay. And was the only problem that there were – it was not clear to you what definitions were used to make the –

A. No.

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Q. Let me finish the question first.

A. Sorry.

Q. I take it there was a problem in that it was unclear to you what definitions were used for the primary diagnoses in the UMMC database, right?

A. No.

Q. Okay. Well, what were the problems with the information that were there that rendered them unsuitable?

A. It was information about the field in the UMMC database in total. We didn't feel that we could get enough information about the whole UMMC database in order to gain an understanding of it enough to know that we were using it right in our analysis.

Q. Okay. Well, there must be people at UMMC who used this database, right?

A. Yes, there are.

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Q. Okay. Did you speak to any of those people in an effort to understand the database?

A. Yes, we did.

Q. Okay. Were they able to explain what it was and how it was used and what things meant?

A. Not entirely.

Q. Does the University of Mississippi Medical Center use its claims database as part of its accounting system?

A. I don't know. I don't know what the connection is.

Q. Did you ask that question or did Mr. Grover ask that question?

A. I believe we did.

Q. You just can't remember the answer?

A. Well, it depends on how you – it's my understanding that if you look at this documentation that we actually used, this came from the accounting system, their general ledger system. It was not generated from the database that we could not use. There is not a direct relationship between the data we couldn't use and the data that Valerie Box provided us. It was a separate data source.

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Q. But more broadly, is the database used as part of the University of Mississippi Medical Center accounting system?

A. I don't know that.

Q. Okay. Now, how does it make a difference that this is not claims data

but (7) patient account data? Does that make a little (8) difference to you?

(9) *A. Yes, because these are patient billing* (10) *and reimbursement records essentially as well as* (11) *other identifying information on patient stays;* (12) *for example, what departments they received* (13) *services from, their first entry point into the* (14) *hospital, all those things that would be indicated* (15) *on the patient record. Presumably this* (16) *information is used to generate a claim to the* (17) *state for services.*

(18) **Q. Well, presumably – a claim to the** (19) **state?**

(20) *A. Right. The provider submits a claim to* (21) *the state.*

(22) **Q. This is not medicaid.**

(23) *A. I understand, but providers submit* (24) *claims to the state for their reimbursement.*

(1) **Q. For what, for charity care and bad** (2) **debts?**

(3) *A. For all services.*

(4) **Q. For all services?**

(5) *A. Right.*

(6) **Q. So aren't hospitals reimbursed by the** (7) **state for charity care and bad debt?**

(8) *A. No.*

(9) **Q. So those claims go unpaid?**

(10) *A. For charity care they go unpaid. For* (11) *bad debt, bad debt is defined as accounts for* (12) *which a portion may be unpaid. So the information* (13) *that's in the database that we couldn't use would* (14) *presumably generate the information on the charges* (15) *that would be charged – that would be reimbursed* (16) *if there were a reimbursement source; but for* (17) *uncompensated care, there is no such source.*

(18) **Q. Okay. So if I walked into the** (19) **University of Mississippi Medical Center today and** (20) **had some procedure done –**

(21) **MR. MacDONALD: Your eye was fixed.**

(22) MR. BIERSTEKER: My eye was fixed.

(23) BY MR. BIERSTEKER:

(24) **Q. (Continuing) – would the University of**

(1) **Mississippi Medical Center submit a claim to the** (2) **State of Mississippi for whatever services were** (3) **rendered to me?**

(4) *A. No.*

(5) **Q. So what claims – what I mean – you** (6) **said there's no claim submitted now for bad debt** (7) **and no claim submitted to the State of Mississippi** (8) **by University of Mississippi Medical Center for** (9) **charity care, right?**

(10) *A. Right.*

(11) **Q. Have I got this right?**

(12) *A. Right.*

(13) MR. YOUNG: Objection. You are saying State (14) of Mississippi. UMMC is State of Mississippi, so –

(15) MR. BIERSTEKER: I understand. You guys seem (16) to have different definitions to suit the (17) immediate purpose, and they're not consistent (18) necessarily, but –

(19) MR. YOUNG: I disagree.

(20) BY MR. BIERSTEKER:

(21) **Q. I was trying to use different words.**

(22) **I guess I don't understand what claims** (23) **we're talking about then, what claims are –**

(24) *A. Where?*

(1) **Q. (Continuing) – are made based upon this** (2) **system.**

(3) *A. None.*

(4) **Q. Okay.**

(5) *A. For people who don't have a payer. The* (6) *data system – that the data that we got came from –* (7) *is not the Valerie Box data, but the database* (8) *comes from their information on patient stays that* (9) *would generate a claim to a payer of service.*

(10) **Q. Oh, I see. So they use this database to** (11) **generate claims to payers of services when there** (12) **is a payer?**

(13) *A. As I understand it, that's part of their* (14) *patient account system, yes.*

(15) **Q. Okay. So again, I guess coming back to** (16) **the main question, how is the fact that this is a** (17) **patient account system as opposed to a claims data** (18) **system – how does that difference matter in terms** (19) **of your assessment of the utility of this data?**

(20) *A. Just the fact that it is different* (21) *doesn't affect our assessment of the utility of* (22) *the system. It means you have to look at it* (23) *differently. Whereas in the medicaid claims data* (24) *everything is organized around a service, a*

(1) *payment and other identifying characteristics of* (2) *that service and payment because that's the whole* (3) *purpose of a claim; whereas the purpose of this* (4) *database is much broader than just a payment and a* (5) *claim. So part of our analysis of the database* (6) *was finding the data that could be used in doing* (7) *an analysis of claims or charges that were unpaid* (8) *in the*

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context of uncompensated care.

(9) **Q. Did you do any analysis of the age** (10) **distribution of the recipients of charity care or** (11) **the bad debt people?**

(12) *A. We did not.*

(13) **Q. Okay. Do you know whether the** (14) **proportion of charity care and bad debts incurred** (15) **by the hospitals for people under the age of 35** (16) **was higher or lower than it would be in the** (17) **Mississippi medicaid program?**

(18) *A. We did not.*

(19) **Q. Okay. Do you know if Dr. Max did that?**

(20) *A. I don't know.*

(21) **Q. Is there any way – the totals that you** (22) **present for University of Mississippi Medical** (23) **Center are totals for everybody, right?**

(24) *A. Everybody as in –*

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(1) **Q. Everybody for charity care and bad** (2) **debts.**

(3) *A. For University of Mississippi Medical* (4) *Center that's what we understand them to be, yes.*

(5) **Q. Okay. And the same is true for Singing** (6) **River and Forrest General, right?**

(7) *A. It is not the case for – it is the case* (8) *for Singing River. For Forrest General it* (9) *includes charity care and bad debt, however, it's* (10) *only those accounts that were unpaid in total. So* (11) *part of account –*

(12) **Q. I understand. But with that exception?**

(13) *A. Right.*

(14) **Q. Have you been asked to segregate charity** (15) **care and bad debt for these three hospitals by age** (16) **group?**

(17) *A. No. I don't know if we had the* (18) *information to do that. I'm not sure.*

(19) **Q. Did you ask the hospitals whether they** (20) **had information on the age distribution of the** (21) **recipients of charity care or the people who were** (22) **bad debts?**

(23) *A. I'm not sure.*

(24) **Q. Okay. Do you know whether any of the**

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(1) **amounts listed for the Singing River Hospital as** (2) **charity care or as bad debts include a loan from** (3) **Jackson County, Mississippi to Singing River** (4) **Hospital?**

(5) *A. I don't know. Do you have –*

(6) **Q. If a loan were included, would that be a** (7) **mistake?**

(8) *A. That's something that we've never* (9) *looked at. I don't know anything about a loan. I'd have* (10) *to look at the nature of the data to see how it* (11) *related.*

(12) **Q. Now I was just looking at one of these** (13) **pages for Forrest General hospital.**

(14) *A. Okay.*

(15) **Q. It's Mississippi Tobacco Litigation – I** (16) **wish you hadn't put that at the top of every page –** (17) **Forrest County General Hospital, Forrest County,** (18) **Uncompensated Care July '90 through June '91.**

(19) *A. July '90 through June of '91.*

(20) **Q. Okay. Now, this is – is there anything –** (21) **well, let me back up.**

(22) **Did you use this data in analyzing the** (23) **claims or dollar amounts that you forwarded to Dr.** (24) **Max?**

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(1) *A. No.*

(2) **Q. And why not?**

(3) *A. We were provided this data, as you can* (4) *see, and the supporting documentation directly* (5) *from the Forrest General accounting – chief* (6) *financial officer. And we couldn't do any* (7) *independent examination of the data to determine* (8) *where it came from and, you know, what it meant.* (9) *We couldn't look at the numbers ourselves. So we* (10) *didn't – we didn't believe that we could base our* (11) *uncompensated care numbers on those.*

(12) **Q. Did you ask for whatever data supported** (13) **these summary schedules?**

(14) *A. I'm not sure. When I talk about an* (15) *examination of the data, I'm talking about* (16) *breakouts. We used the totals.*

(17) **Q. You used the totals, but there is a** (18) **breakout by ICD-9 codes that was ignored?**

(19) *A. Right.*

(20) **Q. And the reason it was ignored – let me** (21) **get it straight. The reason it was ignored was** (22) **you didn't have the backup data, right?**

(23) *A. And we couldn't get any additional* (24) *information on it.*

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(1) **Q. Just wait. You didn't have the backup** (2) **information that went behind the summary schedules** (3) **provided to you by the chief financial officer of** (4) **Forrest General Hospital, right?**

(5) *A. That's what I understand, yes.*

(6) **Q. But you weren't – but you're not sure** (7) **whether you asked for that backup information; is** (8) **that right?**

(9) *A. I'd have to go back and look at our*

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(10) *correspondence.*
(11) **Q. I mean, isn't it the case that a very,** (12) **very low percentage, assuming that this breakdown** (13) **of ICD-9s is correct, okay, of these expenditures** (14) **are for diseases that were selected by Dr. Max?**
(15) MR. YOUNG: Object to the form.
(16) THE WITNESS: I'm not sure if that's the case (17) because I don't know what's included in the other (18) category.
(19) BY MR. BIERSTEKER:
(20) **Q. Well, you could have allocated it based** (21) **upon what you did know, right? Wouldn't that be a** (22) **reasonable thing to do?**
(23) *A. Could have allocated it based on what we* (24) *did know?*

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(1) **Q. Yes.**
(2) *A. I don't know. I really hadn't given it* (3) *any thought.*
(4) **Q. Well, isn't that what you did for** (5) **Mississippi medicaid?**
(6) *A. Well, there's a lot of areas that we* (7) *don't have any information for even in what we do* (8) *know.*
(9) **Q. There were a lot of areas for which you** (10) **didn't have any information within Mississippi** (11) **medicaid, too, right?**
(12) *A. Not to this extent.*
(13) **Q. Well, you didn't know 99 percent of the** (14) **plan costs; you didn't know 99 percent of the** (15) **prescription drug costs; you didn't know 99** (16) **percent of the crossover costs; and you didn't** (17) **know anything about any of the non-claim specific** (18) **adjustments, the bottom-line adjustments, right?**
(19) MR. YOUNG: Object to the form.
(20) THE WITNESS: We didn't know anything about (21) what was in that cost, but we knew a lot more (22) about the population to which we were allocating.
(23) BY MR. BIERSTEKER:
(24) **Q. Well, for all you know Forrest General**

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(1) **might have a lot more information about the** (2) **population to which you are allocating than it** (3) **reflected in this sheet, right?**
(4) *A. But that information wasn't available to* (5) *us.*
(6) **Q. Well, you didn't have it because you're** (7) **not sure whether you asked for it, right?**
(8) *A. I believe we asked them for information* (9) *on ICD-9 expenditures broken down by ICD-9.*

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(10) **Q. Okay. Well, what else did you know** (11) **about the population to whom you were allocating** (12) **expenditures by ICD-9 codes in the medicaid** (13) **population that you didn't know about the Forrest** (14) **General charity care and bad debt people?**
(15) *A. I'm sorry. Can you ask the question* (16) *again?*
(17) **Q. What did you know about the Mississippi** (18) **medicaid population characteristics that you did** (19) **not know about the recipients of charity care or** (20) **the people who had bad debts at Forrest General?**
(21) *A. We knew – we had much more detailed* (22) *claims data that we analyzed and allocated to* (23) *various categories by age and by fiscal year for* (24) *medicaid. We did not have that information for*

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(1) *Forrest General. And the reason we didn't have* (2) *that information for Forrest General is that there* (3) *are a number of categories that are on the* (4) *selected Wendy Max ICD-9 codes that are included* (5) *in this other category. We have no –*
(6) **Q. How do you know that?**
(7) *A. Because as it was represented to us, the* (8) *total uncompensated care expenditures.*
(9) **Q. Wait a minute. Represented to you?**
(10) *A. As it was told to us by the Forrest* (11) *General Hospital when they explained this data to* (12) *us.*
(13) **Q. Who did you talk to; who did you** (14) **personally talk to at Forrest?**
(15) *A. I didn't personally talk to.*
(16) **Q. This was hearsay, right?**
(17) MR. YOUNG: Object.
(18) BY MR. BIERSTEKER:
(19) **Q. You weren't there?**
(20) *A. No, but I did look at the documentation.*
(21) **Q. What documentation, the documentation** (22) **that's in front of all of us here?**
(23) *A. No.*
(24) MR. YOUNG: It might be your question that

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(1) you wrote for the hospitals.
(2) MR. BIERSTEKER: It might be.
(3) I'm sorry. I lost the thread. I have (4) to have something read back unless somebody can (5) help me back. Can you read back the last two (6) questions and answers, please, because I lost it.
(7) (Discussion off the record.)

(8) MR. YOUNG: Object.
(9) BY MR. BIERSTEKER:
(10) **Q. Were you present during discussions that (11) occurred with Forrest General?**
(12) *A. No.*
(13) **Q. If you would turn to the September 30th, (14) 1996 and the 1995 auditors reports on Singing (15) River Hospital.**
(16) *A. Okay.*
(17) **Q. And I am looking at Page 2 where there's (18) a definition of charity care under the paragraph (19) lettered H.**
(20) *A. September 1995 and '94?*
(21) **Q. '95 and '96.**
(22) *A. Oh. Okay.*
(23) **Q. Now, there's a definition – what (24) appears to me to be a definition of charity care**

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(1) **provided on this page, this Page 2 and the letter (2) H. It's in the notes, notes to financial (3) statements.**
(4) *A. It's backwards.*
(5) **Q. Sorry.**
(6) *A. What page again?*
(7) **Q. It's the notes.**
(8) *A. Okay. H?*
(9) **Q. Yes.**
(10) *A. Okay.*
(11) **Q. Do you see that definition – well, is (12) that a definition of charity care?**
(13) *A. Yes.*
(14) **Q. Okay. Now, at least as I read this (15) definition – well, let me read it first. For the (16) record, it says "Charity Care." "The System (17) provides care to patients who meet certain (18) criteria under its charity care policy without (19) charge, or at amounts less than its established (20) rates." Do you see that?**
(21) *A. Uh-huh.*
(22) **Q. Okay. Does that mean that Singing River (23) includes in its charity care the shortfall between (24) the amounts that they agreed to take for a given**

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(1) **service and the amounts that they would normally (2) charge for?**
(3) *A. I don't know.*
(4) **Q. Have you ever heard the term (5) "contractual allowance" used to describe that (6) kind of arrangement?**
(7) *A. Yes, I have.*
(8) **Q. Okay. Are the numbers that you used for (9) the three different hospitals numbers that are (10) accrual based or cash based?**
(11) *A. I don't know.*

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(12) **Q. Now, the charity care and bad debts were (13) evaluated on the basis of charges, right?**
(14) *A. That's – as I understand the data, (15) yes.*
(16) **Q. Okay. And is it also your understanding (17) based on your experience that charges are (18) typically higher than resource costs to hospitals (19) for providing service?**
(20) *A. Yes.*
(21) **Q. Did you ask any of the hospitals here (22) whether they had cost-to-charge ratios?**
(23) *A. Yes, we did.*
(24) **Q. Okay. Did you receive cost-to-charge**

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(1) **ratios?**
(2) *A. Maybe for one year.*
(3) **Q. Okay. Certainly hospitals have those, (4) don't they, in your experience?**
(5) *A. Yes.*
(6) **Q. If you had the cost-to-charge ratios, (7) would you have used them?**
(8) *A. No.*
(9) **Q. Why not?**
(10) *A. Based on conversations with counsel, the (11) data was to be evaluated.*
(12) **Q. Whose idea was it to ask for the (13) cost-to-charge ratios?**
(14) *A. To be honest, I can't remember. I (15) believe it was someone on our team.*
(16) **Q. Without telling me what counsel may have (17) said to you, what is the rationale for using (18) charges, if you have any understanding of that (19) rationale other than what counsel may have told (20) you?**
(21) *A. Other than what counsel told me, no.*
(22) **Q. Okay. Do you know whether the hospitals – (23) any of these hospitals, UMMC or Singing River or (24) Forrest General, operated at full capacity?**

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(1) *A. I don't know.*
(2) **Q. Did you ask for that data?**
(3) *A. No.*
(4) **Q. Do you know whether the three hospitals (5) had losses or gains each year?**
(6) *A. No, I don't.*
(7) **Q. If the hospitals at the end of the year (8) made money – well, let me ask this question (9) instead: Do you know how the hospitals determined (10) their charges?**
(11) *A. No, I don't.*
(12) **Q. Do you know if charges are set at**

a (13) level in order to ensure that the hospitals get (14) compensated for charity care or bad debts?

(15) *A. No, I don't.*

(16) **Q. If the hospitals operate at a net gain (17) over the course of the year, what are the costs to (18) the state of the charity care and the (19) uncompensated – and the bad debts?**

(20) MR. YOUNG: Object to the form.

(21) THE WITNESS: I hadn't given that any thought (22) in that context.

(23) BY MR. BIERSTEKER:

(24) **Q. Have you given it a thought in any**

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(1) **context?**

(2) *A. No.*

(3) **Q. Have you done any analysis of the (4) Mississippi medicaid population over time?**

(5) *A. Expenditures over time.*

(6) **Q. Okay. I meant the makeup of the (7) Mississippi population.**

(8) *A. No.*

(9) **Q. Based upon your experience with medicaid (10) over the course of the last quarter century, have (11) there been changes in the scope of eligibility and (12) the scope of coverage provided by medicaid?**

(13) *A. Yes.*

(14) **Q. Do you think it would be accurate to (15) assume that the age and gender of these (16) characteristics – well, let me do it one at a (17) time or you'll object.**

(18) Would it be accurate to assume that the (19) age characteristics of the medicaid population was (20) the same in the 1990s as it was in the 1970s?

(21) MR. YOUNG: Are you asking her opinion?

(22) MR. BIERSTEKER: Based on her experience, (23) yeah.

(24) THE WITNESS: I would have to specifically

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(1) look at data for any one state to say that. I can (2) tell you the size of the medicaid population has (3) changed. How that size is distributed I couldn't (4) tell you without actually looking at some data.

(5) BY MR. BIERSTEKER:

(6) **Q. Well, what eligibility changes in (7) medicaid have there been? I mean, just in general (8) the ones you know about.**

(9) *A. In general there has been expansion for (10) pregnant women.*

(11) **Q. So that would tend to increase the (12) number of women, right?**

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(13) *A. That's true.*

(14) **Q. Okay.**

(15) *A. Children, there's been increases in the (16) age limit for children up to age 22. Primarily (17) those are the areas. It varies by poverty level, (18) the qualifications by income. So it's been (19) changes in those kinds of criteria: in income, in (20) age, in pregnancy.*

(21) **Q. Okay. Well, certainly pregnancy and age (22) would change the age distribution of the medicaid (23) population, wouldn't it?**

(24) *A. That – the age distribution of the*

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(1) *medicaid population might not necessarily be (2) driven only by the eligibility criteria. It's (3) also driven by the nature of the population as a (4) whole.*

(5) **Q. That's true. But age distributions in (6) population as a whole occur relatively slowly, (7) right?**

(8) *A. I don't know if I'd want to make that (9) conclusion without comparing it. I think you're (10) asking me to do a relative comparison, and I (11) couldn't do that without looking at the numbers.*

(12) **Q. Let me ask you this question: If (13) Mississippi – if the expansion of coverage in (14) Mississippi medicaid to cover more children, all (15) right, were reversed next year, would the age of (16) the Mississippi medicaid population next year be (17) older or younger than it was this year?**

(18) *A. It depends.*

(19) **Q. It depends on what?**

(20) *A. It depends on how many people over 65 (21) fall into a poverty category that would make them (22) eligible. It depends on whether Mississippi (23) medicaid also got approval for home community (24) based services targeted to elderly and physically*

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(1) *disabled that allowed them to expand the number of (2) elderly that they cover.*

(3) **Q. So it's very hard to tell then over time (4) what the age characteristics of the medicaid (5) population in Mississippi were without real data, (6) right?**

(7) *A. To be certain you would have to look at (8) real data.*

(9) **Q. Well, you need to know whether it went (10) up or down, right?**

(11) *A. Well, data would tell you the answer to (12) that question, yes.*

(13) **Q. But I mean you can't know that just even (14) knowing the eligibility criteria?**

(15) *A. Not necessarily.*

(16) **Q. Okay. And the only way to know about** (17) **the gender distribution of Mississippi medicaid** (18) **population over time is to have real data, right?**

(19) *A. I hadn't thought about whether there* (20) *might be some other data sources to look at, trend* (21) *data.*

(22) **Q. Well, trends might be good in some** (23) **respect, but trends aren't going to cover the** (24) **kinds of things we've been talking about, will**

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(1) **they?**

(2) *A. It depends – it depends on what's* (3) *available in terms of the trend data and how* (4) *detailed it is.*

(5) **Q. Well, trend data isn't going to tell you** (6) **much about changes in eligibility, or trend data** (7) **isn't going to tell you whether Mississippi got a** (8) **waiver for the elderly, right?**

(9) *A. You'd have to look at different data* (10) *sources, but it depends on the specific question* (11) *you're trying to answer.*

(12) **Q. Well, the question I'm trying to answer** (13) **is the age gender and disease characteristics of** (14) **the Mississippi medicaid population from 1970 to** (15) **the year 2,000.**

(16) *A. Right.*

(17) **Q. Okay?**

(18) *A. However, the information that we* (19) *provided to Dr. Max was all based on data we had.*

(20) **Q. Oh, yes, it was based on data you had;** (21) **but not data from each year, right?**

(22) *A. Yes, data from each year.*

(23) **Q. That's right. You didn't provide Dr.** (24) **Max with data about the disease distribution of**

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(1) **expenditures in Mississippi medicaid in the 1970s?**

(2) *A. No, we did not.*

(3) **Q. Okay.**

(4) MR. YOUNG: Can we take a break? Are you (5) going to be much longer?

(6) MR. BIERSTEKER: I won't be too much longer. (7) You can take a break; that's fine.

(8) (Short recess.)

(9) BY MR. BIERSTEKER:

(10) **Q. Did Tucker Alan receive only one set of** (11) **MMIS claims data from Mississippi?**

(12) *A. I'd have to go back and look at* (13) *documentation.*

(14) **Q. Did Tucker Alan make any effort to** (15) **examine the reliability of the Mississippi MMIS** (16) **data?**

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(17) *A. How would you define "the reliability"?*

(18) **Q. The accuracy.**

(19) *A. If we were defining accuracy in terms of* (20) *does the data say what it's supposed to say, the* (21) *answer to that question would be yes.*

(22) **Q. I'm not sure I understand that answer.** (23) **What do you mean by do the data say what they're** (24) **supposed to say?**

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(1) *A. In our previous experience with claims* (2) *data, when we're doing analyses with them, we* (3) *generally do what we call quality control or data* (4) *quality checks. So for those portions of the data* (5) *that we're going to use, we look at the data in* (6) *detail to make sure, for example, that the* (7) *diagnosis codes have diagnosis codes in them and* (8) *the age has age and the dollar fields have* (9) *dollars.*

(10) **Q. Oh, I see. Do you attempt to validate** (11) **the data by using information outside of the** (12) **claims data itself?**

(13) *A. In our ordinary course of business we do* (14) *not.*

(15) **Q. Okay. Did you with respect to the** (16) **Mississippi medicaid data?**

(17) *A. No, we did not.*

(18) **Q. Okay. Did Tucker Alan select data that** (19) **it wanted downloaded from any of the various** (20) **healthcare programs that are at issue here or did** (21) **you just ask for all the data that there were?**

(22) *A. We asked for all the data that there* (23) *were.*

(24) **Q. Did Tucker Alan – well, Tucker Alan**

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(1) **helped Dr. Miller interpret the MCHP data, didn't** (2) **it?**

(3) *A. We had conversations with Dr. Miller* (4) *regarding the MCHP data, yes.*

(5) **Q. Okay. What did you tell him? Summarize** (6) **those conversations for me.**

(7) *A. Well, we provided him with all the* (8) *documentation that we had; and if he had a* (9) *specific question about a field – for example,* (10) *what the fields were that we were going to use to* (11) *categorize the MCHP data – we talked to him about* (12) *that and described what we thought was in the* (13) *data. That's an example.*

(14) **Q. Well, are there examples – other** (15) **categories of examples?**

(16) *A. We discussed how we selected the claims* (17) *to be included in the database; we discussed the* (18) *fields that we were go-*

ing to use. Those are the (19) *general areas.*
(20) **Q. What do you mean by "claims to be** (21) **included in the database"?**
(22) *A. Since we had all the claims, we wanted* (23) *to make sure that we had paid and adjusted claims,* (24) *meaning the final payment amounts. We didn't want*

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(1) *to have claims that were void or denied because* (2) *while they would have expenditure data on them,* (3) *they weren't actual expenditures that were made by* (4) *the state. So we talked about the approach that* (5) *we used based on the information that had been* (6) *provided to us by the state and MCHP to select* (7) *those claims.*
(8) **Q. All right. Did you participate in Dr.** (9) **Miller's effort to, I think as he referred to it,** (10) **clean up the data?**
(11) *A. No, we did not.*
(12) **Q. Okay. What percentage of a hospital's** (13) **costs are fixed costs as opposed to variable** (14) **costs?**
(15) *A. I don't know the answer to that* (16) *question.*
(17) MR. BIERSTEKER: I may be finished. Why (18) don't you give me just a few minutes and I'll wrap (19) up and see if there's anything more, but I think (20) I'm done.
(21) (Short recess.)
(22) MR. BIERSTEKER: I don't have anything (23) further.
(24) MR. YOUNG: I'd like to attach your letters

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(1) and the notice of deposition as an exhibit.
(2) MR. BIERSTEKER: You can do that, although I (3) will note that the notice was sent – my (4) understanding is that Ms. Nathan is not designated (5) as a 30(b)(6) witness; that we have requested a (6) 30(b)(6) witness; and that after that request was (7) made, you just announced that she was going to be (8) a fact witness without reference necessarily to (9) specific subjects. But you can make the exhibit – (10) the earlier notice an exhibit if you want.
(11) MR. YOUNG: And the letters, yes.
(12) MR. BIERSTEKER: That can just be collective (13) Exhibit 2, Plaintiff's Exhibit.
(14) MR. YOUNG: It will be Exhibit 2.
(15) (Nathan Exhibit No. 2 marked (16) as requested.)
(17) FURTHER DEPONENT SAYETH NAUGHT

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(1) IN THE CHANCERY COURT OF JACKSON COUNTY, MISSISSIPPI
(2) IN RE: MIKE MOORE, ATTORNEY) GENERAL EX REL, STATE OF)

NOTES

(3) MISSISSIPPI TOBACCO) LITIGATION)
Cause No. 94-1429
(7) I, CATHERINE R. NATHAN, state that I (8) have read the foregoing transcript of the (9) testimony given by me at my deposition on the 16th (10) day of May, 1997, and that said transcript (11) constitutes a true and correct record of the (12) testimony given by me at said deposition except as (13) I have so indicated on the errata sheets provided (14) herein.

(17) CATHERINE R. NATHAN No corrections (Please initial)
(18) Number of errata sheets submitted
(19) SUBSCRIBED AND SWORN to before me this day (20) of , 1997 (21) Notary Public

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(1) STATE OF ILLINOIS)
) SS: (2) COUNTY OF K A N E)
(4) I, KIMBERLY WINKLER CHRISTOPHER, a (5) notary public within and for the County of Kane (6) and State of Illinois, do hereby certify that (7) heretofore, to-wit, on the 16th day of May, 1997, (8) personally appeared before me CATHERINE R. NATHAN, (9) a witness in a certain cause now pending and (10) undetermined in the Chancery Court of Jackson (11) County, Mississippi, In Re: State of Mississippi (12) Tobacco Litigation.
(13) I further certify that the witness was (14) by me first duly sworn to testify the truth, the (15) whole truth and nothing but the truth in the cause (16) aforesaid; that the testimony then given by the (17) said witness was reported stenographically by me (18) in the presence of said witness and was thereafter (19) transcribed under my personal direction, and the (20) foregoing is a true and complete transcript of the (21) testimony so given by the said witness as (22) aforesaid.

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(1) The signature of the witness to the (2) foregoing deposition was not waived.
(3) I further certify that the taking of (4) this deposition was pursuant to notice and that (5) there were present at the taking of said (6) deposition the appearances as heretofore noted.
(7) I further certify that I am not a (8) relative or employee or attorney or counsel, nor a (9) relative or employee of such attorney or counsel (10) for any of the parties hereto, nor interested (11) directly or indirectly in the outcome of this (12) action.
(13) IN TESTIMONY WHEREOF, I have hereunto (14) set my hand and affixed my notarial